

## **Framework Schedule 6 (Order Form Template and Call-Off Schedules)**

### **Order Form**

CALL-OFF REFERENCE:	23_01_03
CALL-OFF TITLE:	User Centred Design
CALL-OFF CONTRACT DESCRIPTION:	The requirement covers the provision a partner who will provide addition capability to support the delivery of DDaT Services across the NHSBSA portfolio, primarily in the User Centred Design family
THE BUYER:	NHS Business Services Authority
BUYER ADDRESS upon Tyne, NE15 8NY	Stella House, Goldcrest Way, Newburn Riverside, Newcastle
THE SUPPLIER:	Hippo Digital Limited
SUPPLIER ADDRESS:	First Floor, Aireside House, 24-26 Aire Street, Leeds LS1 4HT
REGISTRATION NUMBER:	09877239
DUNS NUMBER:	221253893
SID4GOV ID:	158870

#### **APPLICABLE FRAMEWORK CONTRACT**

This Order Form is for the provision of the Call-Off Deliverables and dated 5<sup>th</sup> June 2023

It's issued under the Framework Contract with the reference number RM6263 for the provision of Digital Specialists and Programmes Deliverables.

The Parties intend that this Call-Off Contract will not, except for the first Statement of Work which shall be executed after the Call-Off Contract is executed, oblige the Buyer to buy or the Supplier to supply Deliverables.

The Parties agree that when a Buyer seeks further Deliverables from the Supplier under the Call-Off Contract, the Buyer and Supplier will agree and execute a further Statement of Work (in the form of the template set out in Annex 1 to this Framework Schedule 6 (Order Form Template, SOW Template and Call-Off Schedules).

Upon the execution of each Statement of Work it shall become incorporated into the Buyer and Supplier's Call-Off Contract.

### **CALL-OFF LOT(S):**

#### **Lot 2 - Digital Specialists**

### **CALL-OFF INCORPORATED TERMS**

The following documents are incorporated into this Call-Off Contract. Where numbers are missing we are not using those schedules. If the documents conflict, the following order of precedence applies:

1. This Order Form including the Call-Off Special Terms and Call-Off Special Schedules.
2. Joint Schedule 1 (Definitions) RM6263
3. Framework Special Terms
4. The following Schedules in equal order of precedence:
  - Joint Schedules for RM6263
    - Joint Schedule 2 (Variation Form)
    - Joint Schedule 3 (Insurance Requirements)
    - Joint Schedule 4 (Commercially Sensitive Information)
    - Joint Schedule 6 (Key Subcontractors)
    - Joint Schedule 7 (Financial Difficulties)
    - Joint Schedule 10 (Rectification Plan)
    - Joint Schedule 11 (Processing Data)
    - Joint Schedule 13 (Cyber Essentials)
  - Call-Off Schedules for RM6263
    - Call-Off Schedule 1 (Transparency Reports)
    - Call-Off Schedule 2 (Staff Transfer)
    - Call-Off Schedule 3 (Continuous Improvement)
    - Call-Off Schedule 5 (Pricing Details and Expenses Policy)
    - Call-Off Schedule 6 (Intellectual Property Rights and Additional

Terms on Digital Deliveries)

- Call-Off Schedule 7 (Key Supplier Staff)
  - Call-Off Schedule 8 (Business Continuity and Disaster Recovery)
  - Call-Off Schedule 9 (Security)
  - Call-Off Schedule 10 (Exit Management)
  - Call-Off Schedule 13 (Implementation Plan and Testing)
  - Call-Off Schedule 14B (Service Levels and Balanced Scorecard)
  - Call-Off Schedule 15 (Call-Off Contract Management)
  - Call-Off Schedule 18 (Background Checks)
  - Call-Off Schedule 20 (Call-Off Specification)
5. CCS Core Terms (version 3.0.11)
  6. Joint Schedule 5 (Corporate Social Responsibility) RM6263
  7. Call-Off Schedule 4 (Call-Off Tender) as long as any parts of the Call-Off Tender that offer a better commercial position for the Buyer (as decided by the Buyer) take precedence over the documents above.

No other Supplier terms are part of the Call-Off Contract. That includes any terms written on the back of, added to this Order Form, or presented at the time of delivery.

**CALL-OFF SPECIAL TERMS**

The following Special Terms are incorporated into this Call-Off Contract:

**Special Term 1 - Non-Solicitation of Staff**

Neither Party shall (except with the prior written consent of the other Party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other Party any person employed or engaged by such other Party in the provision of the Services or (in the case of the Buyer) in the receipt of the Services at any time during such employment or engagement of that person by such other Party, or for a period of twelve (12) months after the cessation of such employment or engagement.

1.If either the Supplier or the Buyer commits any breach of this clause, the breaching party shall, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.

2.Nothing in this clause shall prevent either Party from hiring any person by means of a normal advertising campaign not specifically targeted at any of the staff of the other Party.

**Special Term 2 - Further to Joint Schedule 7 section 5, when CCS or the Buyer can terminate the contract for financial distress, the Supplier must ensure that the Buyer has access to any Source Code, object code and Buyer artefacts.**

**Special Term 3 - Overtime**

The Supplier shall not charge for any more than seven and a half (7.5) working hours in one Working Day. Where Services are required to be delivered during Overtime by the Buyer it will be agreed in writing between the authorised personnel of the respective Parties prior to the commencement of the Services to be carried out during Overtime. The Supplier will, where required, provide evidence where services to be carried out as Overtime are agreed. The following Contract Charges will apply to Overtime:

The hourly overtime Contract Charge outside of a Working Day during the time Monday 00:01 hours to Friday 23:59 hours excluding public holiday in England and Wales is  $1.25 \times \text{the Day Rate} / 7.5$  (hours) for the applicable role.

The hourly overtime Contract Charge outside of a Working Day during the time Saturday 00:01 hours to Sunday 23:59 hours and public holiday in England and Wales is  $1.5 \times \text{the Day Rate} / 7.5$  (hours) for the applicable role.

All Overtime requests must be approved by appropriate Buyer Representative - Named Lead on the SOW or agreed senior role (Eg, Product Owner) or their line manager.

CALL-OFF START DATE:	<b>12<sup>th</sup> June 2023</b>
CALL-OFF EXPIRY DATE:	<b>11<sup>th</sup> June 2025</b>
CALL-OFF INITIAL PERIOD:	<b>2 Years</b>
CALL-OFF OPTIONAL EXTENSION PERIOD:	<b>6 Months</b>
MINIMUM NOTICE PERIOD FOR EXTENSION(S):	<b>3 Months</b>
CALL-OFF CONTRACT VALUE:	£5,000,000
KEY SUB-CONTRACT PRICE:	N/A

#### **CALL-OFF DELIVERABLES**

See details in Call-Off Schedule 20 (Call-Off Specification). Specific deliverables will be detailed in each statement of work.

#### **BUYER's STANDARDS**

From the Start Date of this Call-Off Contract, the Supplier shall comply with the relevant (and current as of the Call-Off Start Date) Standards set out in Framework Schedule 1 (Specification). The Buyer requires the Supplier to comply with the following additional Standards for this Call-Off Contract:

[NHSBSA Digital, Data and Technology Playbook - NHSBSA](#)

#### **CYBER ESSENTIALS SCHEME**

The Buyer requires the Supplier, in accordance with Joint Schedule 13 (Cyber Essentials Scheme) to provide a Cyber Essentials Plus Certificate prior to commencing the provision of any Deliverables under this Call-Off Contract.

#### **MAXIMUM LIABILITY**

The limitation of liability for this Call-Off Contract is stated in Clause 11.2 of the Core Terms, as amended by the Framework Award Form Special Terms.

The Estimated Year 1 Charges used to calculate liability in the first Contract Year is £2.5 million Estimated Charges in the first 12 Months of the Contract.

#### **CALL-OFF CHARGES**

- (1) Capped Time and Materials (CTM);
- (2) Incremental Fixed Price;
- (3) Time and Materials (T&M);
- (4) Fixed Price; or
- (5) A combination of two or more of the above Charging methods.

See details in Call-Off Schedule 5 (Pricing Details and Expenses Policy) for further details.

The Charges will not be impacted by any change to the Framework Prices. The Charges can only be changed by agreement in writing between the Buyer and the Supplier because of:

- Specific Change in Law

Where non-UK Supplier Staff (including Subcontractors) are used to provide any element of the Deliverables under this Call-Off Contract, the applicable rate card(s) shall be incorporated into Call-Off Schedule 5 (Pricing Details and Expenses Policy) and the Supplier shall, under each SOW, charge the Buyer a rate no greater than those set out in the applicable rate card for the Supplier Staff undertaking that element of work on the Deliverables.

#### **REIMBURSABLE EXPENSES**

Travel and subsistence included in Q1 - DAY RATES - NATIONAL

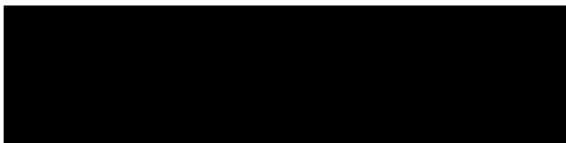
#### **PAYMENT METHOD**

BACS

#### **BUYER'S INVOICE ADDRESS:**

Invoices to be sent to 

#### **BUYER'S AUTHORISED REPRESENTATIVE**



#### **BUYER'S ENVIRONMENTAL POLICY**

[SHEPOL 001 Environmental Policy.doc \(live.com\)](#)

#### **BUYER'S SECURITY POLICY**

[Information Security Policy \(nhsbsa.nhs.uk\)](#)

**SUPPLIER'S AUTHORISED REPRESENTATIVE**

[REDACTED]

Client Delivery Partner

[REDACTED]

[REDACTED]

Aireside House, 24-26 Aire Street, Leeds LS1 4HT

**SUPPLIER'S CONTRACT MANAGER**

[REDACTED]

Chief Commercial Officer

[REDACTED]

[REDACTED]

Aireside House, 24-26 Aire Street, Leeds LS1 4HT

**PROGRESS REPORT FREQUENCY**

On the first Working Day of each calendar month unless otherwise agreed with the Buyer.

**PROGRESS MEETING FREQUENCY**

Quarterly on the first Working Day of each quarter unless otherwise agreed with the Buyer.

**KEY STAFF**

Not used

**KEY SUBCONTRACTOR(S)**

Not used

### COMMERCIALLY SENSITIVE INFORMATION

Supplier rate card and tender submission.

### BALANCED SCORECARD

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

### MATERIAL KPIS

The following Material KPIs shall apply to this Call-Off Contract in accordance with Call-Off Schedule 14B (Service Levels and Balanced Scorecard):

Material KPIs	Target	Measured by
Performance / Timelines  Commencement of Supplier Solution (roles starting) within 10 Working Days of SOW Requirements being agreed by the Buyer and the Supplier.	Good Target – 90%  Approaching Target Threshold – 85%  Requires Improvement Threshold – 80%  Inadequate Threshold – 75%	SOWs within previous 12 calendar months.
Accuracy / Performance / Timelines  Achievement of Fixed Price or Capped Time & Materials SOW within initial agreed time/cost. (or time/cost agreed by both Parties where scope has changed and recorded with a CCN)	Good Target – 90%  Approaching Target Threshold – 85%  Requires Improvement Threshold – 80%  Inadequate Threshold – 75%	SOWs within previous 12 calendar months.
Accuracy / Performance / Quality  Completion of Sprint Points agreed / recorded at start of each Sprint (Where not applicable/achievable and agreed by the Buyer, an alternative criteria can be used)	Good Target – 90% (achieving at least 90% of agreed Sprint Points)  Approaching Target Threshold – 85% (achieving at least 90% of agreed Sprint Points)  Requires Improvement Threshold – 80% (achieving at least 90% of agreed Sprint Points)  Inadequate Threshold – 75% (achieving at least 90% of agreed Sprint Points)	Sprints that have a completion date within a calendar month
Performance/Timelines	Good Target – 90%	Achieve agreed NHSBSA criteria for completion of



Timely Onboarding of new starters on Contract/SOW.	Approaching Target Threshold – 85%  Requires Improvement Threshold – 80%  Inadequate Threshold - 75%	onboarding activity within 10 working days from start date of role
Accuracy /Timelines  Accurate billing by Supplier	All SOWs are to achieve the required NHSBSA standard for the respective role/outcomes each month	The quality and delivery of the SOW is to be reviewed each month by the NHSBSA Delivery Manager
Quality  Achievement of NHSBSA quality and delivery standards.	All SOWs are to achieve the required NHSBSA standard for the respective role/outcomes each month	The quality and delivery of the SOW is to be reviewed each month by the NHSBSA Delivery Manager
As applicable  For any Project/Service specific arrangement, SLA/KPIs can be included within the SOW.	For any Project/Service specific arrangement, SLA/KPIs can be included within the Statement of Work	On an individual SOW basis, to be reviewed by the NHSBSA Delivery Manager and Commercial Contract Manager.
Social Value  For Social Value - SLA/KPIs	For Social Value - SLA/KPIs will be mutually agreed with the successful supplier	To be agreed within 3 months of contract signature

#### **SERVICE CREDITS**

Not applicable

#### **ADDITIONAL INSURANCES**

Not applicable

#### **GUARANTEE**

Not applicable

#### **SOCIAL VALUE COMMITMENT**

The Supplier agrees, in providing the Deliverables and performing its obligations under the Call-Off Contract, that it will comply with the social value commitments in Call-Off Schedule 4 (Call-Off Tender)

#### **STATEMENT OF WORKS**

During the Call-Off Contract Period, the Buyer and Supplier may agree and execute completed Statement of Works. Upon execution of a Statement of Work the provisions detailed therein shall be incorporated into the Call-Off Contract to which this Order Form relates.

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

**For and on behalf of the Buyer:**

## Appendix 1

The first Statement(s) of Works shall be signed after the signature of the Order Form. Thereafter, the Buyer and Supplier shall complete and execute Statement of Works (in the form of the template Statement of Work in Annex 1 to the Order Form in Framework Schedule 6 (Order Form Template, Statement of Work Template and Call-Off Schedules).

### Annex 1 (Template Statement of Work)

Statement of Work – SOW-SE0xx – Title of service

#### 1 Statement of Works (SOW) Details

Upon execution, this SOW forms part of the Call-Off Contract (reference below).

The Parties will execute a SOW for each set of Buyer Deliverables required. Any ad-hoc Deliverables requirements are to be treated as individual requirements and the Parties should execute a separate SOW in respect of each, or alternatively agree a Variation to an existing SOW.

All SOWs must fall within the Specification and provisions of the Call-Off Contract.

The details set out within this SOW apply only in relation to the Deliverables detailed herein and will not apply to any other SOWs executed or to be executed under this Call-Off Contract, unless otherwise agreed by the Parties in writing.

<b>Date of SOW:</b>									
<b>SOW Title:</b>									
<b>SOW Reference:</b>									
<b>Call-Off Contract Reference:</b>	This SOW is being entered into pursuant to the Call-Off Contract dated XXXXXX entered into by NHS Business Services Authority ("the Buyer") and XXXXXX (the "Supplier") relating to the XXXXXXXX contract as amended (the "Call-Off Contract").								
<b>Buyer:</b>	NHS Business Services Authority								
<b>Supplier:</b>									
<b>SOW Start Date:</b>	DD Month Year								
<b>SOW End Date:</b>	DD Month Year								
<b>Duration of SOW:</b>	TBC								
<b>SOW Value</b>	TBC								
<b>Key Personnel (Buyer):</b>	<table><tr><th>Name</th><th>Role</th><th>Details</th></tr><tr><td colspan="3"></td></tr></table>			Name	Role	Details			
Name	Role	Details							

		Contract Manager		
		Commercial Officer		
<b>Key Personnel (Supplier):</b>				
	<b>Name</b>	<b>Role</b>	<b>Details</b>	
		Delivery Manager		
		Contract Manager		
<b>Subcontractors:</b>	N/A			

## 2 Call-Off Contract Specification – Programme/Deliverables Context

<b>SOW Deliverables Background:</b>	
<b>Delivery Phase</b>	
<b>Overview of Buyer's Requirements:</b>	
<b>Buyers Requirements: Technical skills/experience required following consultation with Buyer's Professional Leads</b>	
<b>Accountability Models</b>	<p><i>Please select the Accountability Model(s) that shall be used under this Statement of Work (Delete as applicable):</i></p> <p>Sole Responsibility: <input type="checkbox"/></p> <p>Self Directed Team: <input type="checkbox"/></p> <p>Rainbow Team: <input type="checkbox"/></p>

## 3 Buyer Requirements – SOW Deliverables

<b>Outcome Description:</b>	
<b>Milestones</b>	
<b>Delivery Plan:</b>	<p>The Supplier will agree an initial plan with the Buyer within the first sprint, and maintain ongoing, to ensure there is an agreed delivery plan in place for achievement of the requirements. Delivery plan will be reviewed with the Buyer on a weekly basis</p> <p>OR</p> <p>Set out the defined delivery schedule agreed in advance as part of the Supplier Solution</p>
<b>Assumptions :</b>	<p><b>ASSUMPTIONS – Examples</b></p> <p>[Supplier must be able to provide resources to perform the following roles within a project as defined by GDS role descriptions.  <a href="https://www.gov.uk/service-manual/the-team/what-each-role-does-in-service-team">https://www.gov.uk/service-manual/the-team/what-each-role-does-in-service-team</a>]</p> <p>[Supplier must provide resources that are aligned to the relevant SFIA role levels charged within the Supplier Resource Plan as defined by SFIA level descriptions.  <b>LINK NEEDED</b>]</p> <p>[The Supplier will be able to participate in the Buyers Communities of Practice, to ensure they are integrated into the role group.]</p> <p>[Overall business prioritisation and direction to be provided to the Supplier Delivery Lead by the Buyer Product Owner, Buyer Service Owner or nominated deputy. Specific tasks will be defined, prioritised and agreed between the Buyer and Supplier on a Sprint-by-Sprint basis, all of which will contribute to the Deliverables as set out herein.]</p> <p>[Insert further assumptions if required.]</p>
<b>Dependencies:</b>	<p><b>DEPENDENCIES – Examples</b></p> <p>[Buyer is responsible for the coordination of Buyer resources, in respect of which Buyer will set out the required attendance, co-operation and performance of resources. ]</p> <p>[Buyer is responsible for the management of Risks and Issues with respect to the overall Service.]</p> <p>[Buyer is responsible for providing any documentation required to undertake the scope of activities described within this SOW for example any Buyer standards. ]</p> <p>[Buyer will ensure availability of a Product Owner to clarify requirement and queries of the team during transition. These queries will be raised through the Buyer's</p>

	<p>Delivery Lead or Product Owner.]</p> <p>[The Buyer will support the Supplier's on-boarding and knowledge transfer to all Supplier staff detailing appropriate behaviour, policies, governance and acceptable standards.]</p> <p>[The Buyer will provide a Buyer device and access to all systems, infrastructure, software and tooling as necessary to allow the Supplier to meet its obligations under this SOW.]</p> <p>[The Buyer will not grant access to Personal Data to the Supplier.]</p> <p>[The Supplier will provide and agree a plan outlining access required to The Buyer's and incumbent resources to facilitate knowledge transfer, including shadowing and reverse shadowing. The Buyer will be responsible for ensuring access is provided in line with this plan.]</p> <p>[The Buyer to provide access to NHSBSA stakeholders and assurance groups (Clinical, Solutions Assurance, IG, Data, InfoSec) required to support transition activities.]</p> <p>[The availability and deployment of code will not be a dependency on the availability of the environments in dev/test/stage/prod i.e. the availability of the environments will be validated/ confirmed without the deployment of the associated application code.]</p> <p>[The Buyer will ensure availability of the Product Lead and Service Owner to agree the scope and roadmap of the SOW2 with prioritised backlog at Epic level, 2 weeks prior to end of SOW to allow sufficient time for the SOW2 to be defined.]</p> <p>[Insert further dependencies if required]</p>
<b>Supplier Resource Plan:</b>	
<b>Risks, Issues and Mitigations:</b>	<p><b>[General approach risks:</b></p> <ul style="list-style-type: none"> <li>• Risk those dependencies are not met, which will impact the timeline and pricing.</li> <li>• Risk those assumptions prove to be incorrect, which could impact the delivery of outcomes.</li> <li>• Agile projects have a scope that will change over time. The detailed scope can evolve and change which may impact the timeline and pricing. The Buyer and Supplier will meet and review the above on a regular basis and agree any required changes to the scope, timeline and/or pricing.</li> </ul> <p>Agile projects have a scope that will change over time. The detailed scope can evolve and change which may impact the timeline and the team's effort. As a mitigation, the Buyer and Supplier will meet and review the above on a regular basis and agree any required changes to deliver the scope and the team's composition.]</p>

Security Applicable to SOW:	<p>The Supplier confirms that all Supplier Staff working on Buyer Sites and on Buyer Systems and Deliverables, have completed Supplier Staff Vetting in accordance with Paragraph 6 (Security of Supplier Staff) of Part B – Annex 1 (Baseline Security Requirements) of Call-Off Schedule 9 (Security).</p> <p>[If different security requirements than those set out in Call-Off Schedule 9 (Security) apply under this SOW, these shall be detailed below and apply only to this SOW: <b>[insert if necessary]</b> ]</p>									
Cyber Essentials Scheme:	<p>The Buyer requires the Supplier to have and maintain a <b>Cyber Essentials Plus Certificate</b> for the work undertaken under this SOW, in accordance with Joint Schedule 13 (Cyber Essentials Scheme).</p>									
SOW Standards:	<p>No SOW Specific standards applied.</p>									
Performance Management:	<p><b>State Contract Level SLAs that will be applied.</b></p> <p><b>In addition:</b></p> <ul style="list-style-type: none"><li>- <b>a Monthly review of quality/delivery will be completed</b></li><li>- <b>A SOW Closure report</b></li></ul> <p><b>[Insert details of Material KPIs that have a material impact on Contract performance]</b></p> <table><tr><th>Material KPIs</th><th>Target</th><th>Measured by</th></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr></table> <p><b>[Insert Service Levels and/or KPIs – See Call-Off Schedule 14 (Service Levels and Balanced Scorecard)]</b></p>	Material KPIs	Target	Measured by						
Material KPIs	Target	Measured by								
Additional Requirement s:	<p><b>Annex 1</b> – Where Annex 1 of Joint Schedule 11 (Processing Data) in the Call-Off Contract does not accurately reflect the data Processor / Controller arrangements applicable to this Statement of Work, the Parties shall comply with the revised Annex 1 attached to this Statement of Work.</p> <p><b><u>Personal Data</u></b></p> <p>The Supplier will need to:</p> <ul style="list-style-type: none"><li>• Complete and pass all required Information Governance training made available by the Buyer, completion of which will be signed off by the Buyer</li></ul> <p>There will not be a requirement for the Supplier resources to view Production Data / Personal Data as part of the Services provided, and any exposure to such data will only be incidental as part of provision of the Services, in which event the Buyer shall determine and instruct the Supplier in writing as to the manner in which the Supplier</p>									



	<p>shall process the data and what technical and organisational measures shall be put in place. The Supplier shall promptly notify the Buyer of any instruction received that it believes breaches any principle of privacy or security by design.</p> <p><b>Exit Obligations</b></p> <p>All outputs will be made available to the Buyer on an ongoing basis and throughout delivery.</p>																
<b>Key Supplier Staff</b>	<p><b>Assumption is that there will not be any Key staff called out</b></p> <table border="1"> <thead> <tr> <th>Key Role</th><th>Key Staff</th><th>Contract Details</th></tr> </thead> <tbody> <tr> <td></td><td></td><td></td></tr> </tbody> </table>	Key Role	Key Staff	Contract Details													
Key Role	Key Staff	Contract Details															
<b>Worker Engagement Status</b>	<p>[Yes / No] [Insert details]</p> <p><b>IR35 - Statement Determination</b></p> <p>[Indicate: whether there is any requirement to issue a Status Determination Statement]</p>																
<b>Any tools/products required by the Supplier:</b>	<table border="1"> <thead> <tr> <th>Software name</th><th>Ownership</th></tr> </thead> <tbody> <tr><td></td><td></td></tr> <tr><td></td><td></td></tr> <tr><td></td><td></td></tr> <tr><td></td><td></td></tr> <tr><td></td><td></td></tr> <tr><td></td><td></td></tr> <tr><td></td><td></td></tr> </tbody> </table>	Software name	Ownership														
Software name	Ownership																
<b>SOW Reporting Requirements:</b>	<p>Reporting Requirements in line with Call Off Contract.</p> <p>The Buyer may at a later date request SOW specific reporting, which will be agreed with the Supplier.</p>																

#### 4 Charges

<b>Call Off Contract Charges:</b>	<p>The applicable charging method(s) for this SOW is:</p> <ul style="list-style-type: none"> <li>• [Capped Time and Materials]</li> <li>• [Incremental Fixed Price]</li> <li>• [Time and Materials]</li> <li>• [Fixed Price]</li> <li>• [2 or more of the above charging methods]</li> </ul> <p><b>[Buyer to select as appropriate for this SOW]</b></p> <p>The estimated maximum value of this SOW (irrespective of the selected charging method) is £[Insert detail].</p>
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	The Charges detailed in the financial model shall be invoiced in accordance with Clause 4 of the Call-Off Contract.
<b>SOW Maximum Value:</b>	The maximum value of this SOW <b>£ XXXX (Ex-VAT)</b>
<b>Rate Cards Applicable:</b>	Refer to Call-Off Contract Rate Card. <i><b>[Insert SOW applicable Supplier and Subcontractor rate cards from Call-Off Schedule 5 (Pricing Details and Expenses Policy), including details of any discounts that will be applied to the work undertaken under this SOW.]</b></i>
<b>Financial Model</b>	<i><b>[Supplier to insert its financial model applicable to this SOW]</b></i>
<b>Reimbursable Expenses:</b>	<p>None – the Supplier will deliver all services remotely and hence there are no expenses included in the Charges provided above.</p> <p>Should the Buyer require Supplier Staff to deliver services from any of the Buyer's sites, or other location which requires Supplier Staff to travel, the Buyer will provide an estimate of expenses likely to be incurred as a result.</p> <p>Should the Buyer then confirm Supplier Staff are required to travel, the resultant travel and subsistence costs will be billed as incurred.</p> <p>All expenses require advance approval by the Buyer.</p>

## 5 Signatures and Approvals

### Agreement of this SOW

BY SIGNING this Statement of Work, the Parties agree that it shall be incorporated into Appendix 1 of the Order Form and incorporated into the Call-Off Contract and be legally binding on the Parties:

**For and on behalf of the Buyer:**

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

# ANNEX 1

## Data Processing

Prior to the execution of this Statement of Work, the Parties shall review Annex 1 of Joint Schedule 11 (Processing Data) and if the contents of Annex 1 does not adequately cover the Processor / Controller arrangements covered by this Statement of Work, Annex 1 shall be amended as set out below and the following table shall apply to the Processing activities undertaken under this Statement of Work only:

**[TEMPLATE ANNEX 1 OF JOINT SCHEDULE 11 (PROCESSING DATA BELOW)]**

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Relevant Authority is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with paragraph 2 to paragraph 15 and for the purposes of the Data Protection Legislation, the Relevant Authority is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"><li>● <b>[Insert]</b> the scope of Personal Data for which the purposes and means of the Processing by the Supplier is determined by the Relevant Authority]</li></ul> <p><b>The Supplier is Controller and the Relevant Authority is Processor</b></p> <p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Relevant Authority is the Processor in accordance with paragraph 2 to paragraph 15 of the following Personal Data:</p> <ul style="list-style-type: none"><li>● <b>[Insert]</b> the scope of Personal Data which the purposes and means of the Processing by the Relevant Authority is determined by the Supplier]</li></ul> <p><b>The Parties are Joint Controllers</b></p> <p>The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"><li>● <b>[Insert]</b> the scope of Personal Data which the purposes and means of the Processing is determined by the both Parties together]</li></ul> <p><b>The Parties are Independent Controllers of Personal Data</b></p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"><li>● Business contact details of Supplier Personnel for which the Supplier is the Controller,</li><li>● Business contact details of any directors, officers, employees, agents, consultants and contractors of Relevant Authority (excluding the Supplier Personnel) engaged in the performance of the Relevant Authority's duties under the Contract) for which the Relevant Authority is the Controller,</li><li>● <b>[Insert]</b> the scope of other Personal Data provided by one Party who is Controller to the other Party who will separately determine the nature and</li></ul>

	<i>purposes of its Processing the Personal Data on receipt e.g. where (1)</i>
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	<p><i>the Supplier has professional or regulatory obligations in respect of Personal Data received, (2) a standardised service is such that the Relevant Authority cannot dictate the way in which Personal Data is processed by the Supplier, or (3) where the Supplier comes to the transaction with Personal Data for which it is already Controller for use by the Relevant Authority]</i></p> <p><b>[Guidance]</b> <i>where multiple relationships have been identified above, please address the below rows in the table for in respect of each relationship identified]</i></p>
Duration of the Processing	<i>[Clearly set out the duration of the Processing including dates]</i>
Nature and purposes of the Processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]</i>
Plan for return and destruction of the data once the Processing is complete  UNLESS requirement under Union or Member State law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

## Joint Schedule 1 (Definitions)

1.1 In each Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Joint Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.

1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

1.3 In each Contract, unless the context otherwise requires:

1.3.1 the singular includes the plural and vice versa;

1.3.2 reference to a gender includes the other gender and the neuter;

1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;

1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

1.3.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";

1.3.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;

1.3.7 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under the Contract;

1.3.8 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;

1.3.9 references to "**Paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided;

1.3.10 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified;

1.3.11 the headings in each Contract are for ease of reference only and shall not affect the interpretation or construction of a Contract;

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1.3.12 where the Buyer is a Central Government Body it shall be treated as contracting with the Crown as a whole;

1.3.13 where a standard, policy or document is referred to by reference of a hyperlink, if that hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Relevant Authority and the Parties shall update the reference to a replacement hyperlink;

1.3.14 any reference in a Contract which immediately before Exit Day was a reference to (as it has effect from time to time):

(a) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and

(b) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred; and

1.3.15 unless otherwise provided, references to "**Buyer**" shall be construed as including Exempt Buyers; and

1.3.16 unless otherwise provided, references to "**Call-Off Contract**" and "**Contract**" shall be construed as including Exempt Call-off Contracts.

1.4 In each Contract, unless the context otherwise requires, the following words shall have the following meanings:

" <b>Achieve</b> "	in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone if specified within the Buyer's acceptance testing procedure and " <b>Achieved</b> ", " <b>Achieving</b> " and " <b>Achievement</b> " shall be construed accordingly;
" <b>Additional Insurances</b> "	insurance requirements relating to a Call-Off Contract specified in the Order Form additional to those outlined in Joint Schedule 3 (Insurance Requirements);
" <b>Admin Fee</b> "	means the costs incurred by CCS in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the CCS on: <a href="http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees">http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees</a> ;
" <b>Affected Party</b> "	the Party seeking to claim relief in respect of a Force Majeure Event;
" <b>Affiliates</b> "	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

<b>"Annex"</b>	extra information which supports a Schedule;
<b>"Approval"</b>	the prior written consent of the Buyer and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;
<b>"Audit"</b>	<p>the Relevant Authority's right to:</p> <ul style="list-style-type: none"> <li>a) verify the accuracy of the Charges and any other amounts payable by a Buyer under a Call-Off Contract (including proposed or actual variations to them in accordance with the Contract);</li> <li>b) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;</li> <li>c) verify the Open Book Data;</li> <li>d) verify the Supplier's and each Subcontractor's compliance with the Contract and applicable Law;</li> <li>e) identify or investigate actual or suspected breach of Clauses 27 to 33 and/or Joint Schedule 5 (Corporate Social Responsibility), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Relevant Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;</li> <li>f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;</li> <li>g) obtain such information as is necessary to fulfil the Relevant Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;</li> <li>h) review any books of account and the internal contract management accounts kept by the Supplier in connection with each Contract;</li> <li>i) carry out the Relevant Authority's internal and statutory audits and to prepare, examine and/or certify the Relevant Authority's annual and interim reports and accounts;</li> <li>j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Relevant Authority has used its resources; or</li> </ul>

	k) verify the accuracy and completeness of any Management Information delivered or required by the Framework Contract;
<b>"Auditor"</b>	<p>a) the Relevant Authority's internal and external auditors;</p> <p>b) the Relevant Authority's statutory or regulatory auditors;</p> <p>c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</p> <p>d) HM Treasury or the Cabinet Office;</p> <p>e) any party formally appointed by the Relevant Authority to carry out audit or similar review functions; and</p> <p>f) successors or assigns of any of the above;</p>
<b>"Authority"</b>	CCS and each Buyer;
<b>"Authority Cause"</b>	any breach of the obligations of the Relevant Authority or any other default, act, omission, negligence or statement of the Relevant Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Relevant Authority is liable to the Supplier;
<b>"Authorised User"</b>	CCS' and Buyers' individual or group of individuals (including employees, consultants, contractors and agents) authorised by CCS and/or the Buyer to:



	a) access and use the Platform for the purposes set out in Framework Schedule 7 (Call-Off Award Procedure); and b) the rights granted under (a) shall apply unless and until that authorisation is revoked by CCS or the Buyer;
<b>"BACS"</b>	the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;
<b>"Balanced Scorecard"</b>	a tool for Call-Off Contract management activity, through measurement of a Supplier's performance against key performance indicator, which the Buyer and Supplier may agree at the Call-Off Contract Start Date;
<b>"Beneficiary"</b>	a Party having (or claiming to have) the benefit of an indemnity under this Contract;
<b>"Buyer"</b>	the relevant public sector purchaser identified as such in the Order Form;
<b>"Buyer Assets"</b>	the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of the Contract;
<b>"Buyer Authorised Representative"</b>	the representative appointed by the Buyer from time to time in relation to the Call-Off Contract initially identified in the Order Form;
<b>"Buyer Premises"</b>	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);
<b>"Buyer Registration Process"</b>	the process to be completed in accordance with Framework Schedule 7 (Call-Off Award Procedure) or as otherwise notified to the Buyer in writing by CCS, the completion of which shall result in a potential Buyer being registered as a "Buyer" within the Platform which will entitle the Buyer to undertake a Call-Off Procedure in accordance with Framework Schedule 7, as supported by the Platform;

<b>"Buyer's Guidance"</b>	guidance for Buyers on how to buy digital services using the Framework Contract, located at the CCS website: <a href="https://www.crowncommercial.gov.uk/agreements/RM6263">https://www.crowncommercial.gov.uk/agreements/RM6263</a> ;
<b>"Call-Off Contract"</b>	the contract between the Buyer and the Supplier (entered into pursuant to the provisions of the Framework Contract), which consists of the terms set out and referred to in the Order Form;
<b>"Call-Off Contract Period"</b>	the Contract Period in respect of the Call-Off Contract;
<b>"Call-Off Expiry Date"</b>	the latter of: a) the scheduled date of the end of a Call-Off Contract as stated in the Order Form; or b) the date of completion of the last Deliverable due under the last Statement of Work under the Call-Off Contract;
<b>"Call-Off Incorporated Terms"</b>	the contractual terms applicable to the Call-Off Contract specified under the relevant heading in the Order Form;
<b>"Call-Off Initial Period"</b>	the Initial Period of a Call-Off Contract specified in the Order Form;
<b>"Call-Off Optional Extension Period"</b>	such period or periods beyond which the Call-Off Initial Period may be extended as specified in the Order Form;
<b>"Call-Off Procedure"</b>	the process for awarding a Call-Off Contract pursuant to Clause 2 (How the contract works) and Framework Schedule 7 (Call-Off Award Procedure);
<b>"Call-Off Special Terms"</b>	any additional terms and conditions specified in the Order Form incorporated into the applicable Call-Off Contract;
<b>"Call-Off Start Date"</b>	the date of start of a Call-Off Contract as stated in the Order Form;
<b>"Call-Off Tender"</b>	the tender submitted by the Supplier in response to the Buyer's Statement of Requirements following a Further Competition Procedure and set out at Call-Off Schedule 4 (Call-Off Tender);
<b>"Cap"</b>	the maximum amount to be paid by the Buyer under a Time and Materials mechanism for the delivery of an agreed scope;

<b>"Capped Time and Materials"</b>	Time and Materials payable up to a specified Cap for delivery of the agreed scope of Deliverables;
<b>"CaM Tool"</b>	the capability assessment matrix (CAM) is a downselect or multi-identifier functionality tool within the Platform to be used by Buyers to identify capable suppliers able to meet its Statement of Requirements by means of (a) ranking the suppliers, or (b) shortlisting the suppliers, which is comprised of Resource Profile, Service Capability, Location and Scalability as described in and a copy of the CaM Tool is in Annex C of Framework Schedule 7 (Call-Off Award Procedure);
<b>"CCS"</b>	the Minister for the Cabinet Office as represented by Crown Commercial Service, which is an executive agency and operates as a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
<b>"CCS Authorised Representative"</b>	the representative appointed by CCS from time to time in relation to the Framework Contract initially identified in the Framework Award Form;
<b>"Central Government Body"</b>	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: a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
<b>"Change in Law"</b>	any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Start Date;
<b>"Change of Control"</b>	is: a) a change of control within the meaning of Section 450 of the Corporation Tax Act 2010; or b) any instance where the Supplier demerges into 2 or more firms, merges with another firm, incorporated or otherwise changes its legal form;

<b>"Charges"</b>	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Call-Off Contract, as set out in the Order Form and, if applicable, each Statement of Work, for the full and proper performance by the Supplier of its obligations under the Call-Off Contract less any Deductions;
<b>"Claim"</b>	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;
<b>"Commercially Sensitive Information"</b>	the Confidential Information listed in the Framework Award Form or Order Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
<b>"Comparable Supply"</b>	the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
<b>"Compliance Officer"</b>	the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
<b>"Confidential Information"</b>	any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of CCS, the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
<b>"Conflict of Interest"</b>	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to CCS or any Buyer under a Contract, in the reasonable opinion of the Buyer or CCS, as the context requires;
<b>"Contract"</b>	either the Framework Contract or the Call-Off Contract, as the context requires;
<b>"Contract Period"</b>	the term of either a Framework Contract or Call-Off Contract on and from the earlier of the: a) applicable Start Date; or

	b) the Effective Date, up to and including the applicable End Date;
<b>"Contract Value"</b>	the higher of the actual or expected total Charges paid or payable under a Contract where all obligations are met by the Supplier;
<b>"Contract Year"</b>	a consecutive period of twelve (12) Months commencing on the Start Date or each anniversary thereof;
<b>"Control"</b>	<p>a) control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010; or</p> <p>b) any instance where the Supplier demerges into 2 or more firms, merges with another firm, incorporated or otherwise changes its legal form;</p> <p>and "Controlled" shall be construed accordingly;</p>
<b>"Controller"</b>	has the meaning given to it in the UK GDPR;
<b>"Core Terms"</b>	CCS' terms and conditions for common goods and services which govern how Suppliers must interact with CCS and Buyers under Framework Contracts and Call-Off Contracts;
<b>"Costs"</b>	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:</p> <p>a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including:</p> <p>i) base salary paid to the Supplier Staff;</p> <p>ii) employer's National Insurance contributions;</p> <p>iii) pension contributions;</p> <p>iv) car allowances;</p> <p>v) any other contractual employment benefits;</p> <p>vi) staff training;</p> <p>vii) work place accommodation;</p> <p>viii) work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and</p>

	<p>ix) reasonable recruitment costs, as agreed with the Buyer;</p> <p>b) costs incurred in respect of Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</p> <p>c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables; and</p> <p>d) Reimbursable Expenses to the extent these have been specified as allowable in the Order Form and are incurred in delivering any Deliverables;</p> <p>but excluding:</p> <p>i) Overhead;</p> <p>ii) financing or similar costs;</p> <p>iii) maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Call-Off Contract Period whether in relation to Supplier Assets or otherwise;</p> <p>iv) taxation;</p> <p>v) fines and penalties;</p> <p>vi) amounts payable under Call-Off Schedule 16 (Benchmarking) where such Schedule is used; and</p> <p>vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);</p>
<b>"CRTPA"</b>	the Contract Rights of Third Parties Act 1999;
<b>"Data Protection Impact Assessment"</b>	an assessment by the Controller of the impact of the envisaged
<b>"Data Protection Legislation"</b>	(i) the UK GDPR as amended from time to time; (ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy; (iii) all applicable Law about the Processing of Personal Data and privacy;

<b>"Data Protection Liability Cap"</b>	the amount specified in the Framework Award Form;
<b>"Data Protection Officer"</b>	has the meaning given to it in the UK GDPR;
<b>"Data Subject"</b>	has the meaning given to it in the UK GDPR;
<b>"Data Subject Access Request"</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>"Day Rate"</b>	the Pricing Mechanism where the Supplier will invoice the Buyer for Supplier Staff providing Deliverables (or one or more of the elements of the Deliverables) based on a rate for no more than 7.5 Work Hours performed by the Supplier's Staff based on the applicable grade(s) set out in Annex 1 of Framework Schedule 3 (Framework Prices);
<b>"Deductions"</b>	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under a Call-Off Contract;
<b>"Default"</b>	any breach of the obligations of the Supplier (including abandonment of a Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of a Contract and in respect of which the Supplier is liable to the Relevant Authority;
<b>"Default Management Charge"</b>	has the meaning given to it in Paragraph 8.1.1 of Framework Schedule 5 (Management Charges and Information);
<b>"Delay Payments"</b>	the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
<b>"Deliverables"</b>	Goods and/or Services that may be ordered under the Contract including the Documentation;
<b>"Delivery"</b>	delivery of the relevant Deliverable or Milestone in accordance with the terms of a Call-Off Contract as confirmed and accepted by the Buyer by the either (a)

	confirmation in writing to the Supplier; or (b) where Call-Off Schedule 13 (Implementation Plan and Testing) is used issue by the Buyer of a Satisfaction Certificate. "Deliver" and "Delivered" shall be construed accordingly;
<b>"Disclosing Party"</b>	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 15 (What you must keep confidential);
<b>"Dispute"</b>	any claim, dispute or difference (whether contractual or non-contractual) arising out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;
<b>"Dispute Resolution Procedure"</b>	the dispute resolution procedure set out in Clause 34 (Resolving disputes);
<b>"Documentation"</b>	<p>descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under a Contract as:</p> <p>a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables</p> <p>b) is required by the Supplier in order to provide the Deliverables; and/or</p> <p>c) has been or shall be generated for the purpose of providing the Deliverables;</p>
<b>"DOTAS"</b>	the Disclosure of Tax Avoidance Schemes rules which require a promoter of Tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time



	limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;
<b>"DPA 2018"</b>	the Data Protection Act 2018;
<b>"Due Diligence Information"</b>	any information supplied to the Supplier by or on behalf of the Authority prior to the Start Date;
<b>"Effective Date"</b>	the date on which the final Party has signed the Contract;
<b>"EIR"</b>	the Environmental Information Regulations 2004;
<b>"Electronic Invoice"</b>	an invoice which has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing and which complies with (a) the European standard and (b) any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870;
<b>"Employment Regulations"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC;
<b>"End Date"</b>	the earlier of: a) the Expiry Date (as extended by any Extension Period exercised by the Relevant Authority under Clause 10.1.2); or b) if a Contract or Statement of Work is terminated before the date specified in (a) above, the date of termination of the Contract or Statement of Work (as the context dictates);
<b>"Environmental Policy"</b>	to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer;

<b>"Equality and Human Rights Commission"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Estimated Year 1 Charges"</b>	the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Order Form;
<b>Estimated Yearly Charges"</b>	for the purposes of calculating each Party's annual liability under Clause 11.2: a) in the first Contract Year, the Estimated Year 1 Charges; or b) in the any subsequent Contract Years, the Charges paid or payable in the previous Call-off Contract Year; or c) after the end of the Call-off Contract, the Charges paid or payable in the last Contract Year during the Call-off Contract Period;
<b>"Exempt Buyer"</b>	a public sector purchaser that is: a) eligible to use the Framework Contract; and b) is entering into an Exempt Call-off Contract that is not subject to (as applicable) any of: i) the Regulations; ii) the Concession Contracts Regulations 2016 (SI 2016/273); iii) the Utilities Contracts Regulations 2016 (SI 2016/274); iv) the Defence and Security Public Contracts Regulations 2011 (SI 2011/1848); v) the Remedies Directive (2007/66/EC); vi) Directive 2014/23/EU of the European Parliament and Council; vii) Directive 2014/24/EU of the European Parliament and Council; viii) Directive 2014/25/EU of the European Parliament and Council; or ix) Directive 2009/81/EC of the European Parliament and Council;
<b>"Exempt Call-off Contract"</b>	the contract between the Exempt Buyer and the Supplier for Deliverables which consists of the terms set out and referred to in the Order Form incorporating and, where necessary, amending, refining or adding to the terms of the Framework Contract;
<b>"Exempt Procurement Amendments"</b>	any amendments, refinements or additions to any of the terms of the Framework Contract made through the Exempt Call-off Contract to reflect the specific needs of an Exempt Buyer to the extent permitted by

	and in accordance with any legal requirements applicable to that Exempt Buyer;
<b>"Expenses Policy"</b>	the Buyer's expenses policy as set out in Annex 1 to Call-Off
<b>"Existing IPR"</b>	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise) and shall include, in the case of CCS, the website domain names <a href="http://www.crowncommercial.gov.uk">www.crowncommercial.gov.uk</a> and [Insert] regarding the Platform;
<b>"Exit Day"</b>	shall have the meaning in the European Union (Withdrawal) Act 2018;
<b>"Expiry Date"</b>	the Framework Expiry Date or the Call-Off Expiry Date (as the context dictates);
<b>"Extension Period"</b>	the Framework Optional Extension Period or the Call-Off Optional Extension Period as the context dictates;
<b>"Fixed Price"</b>	the Pricing Mechanism where Charges are agreed at a set amount in relation to all work to be done under a Contract, Statement of Work, Deliverable(s) (or one or more element of the Deliverable(s)) including all materials and/or Milestones, no matter how much work is required to complete each Contract, Statement of Work, Deliverable(s) (or one or more element of the Deliverable(s)) within the agreed scope, and the total amount to be paid by the Buyer will not exceed the agreed fixed price;
<b>"FOIA"</b>	the Freedom of Information Act 2000 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;
<b>"Force Majeure Event"</b>	any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful

	<p>act, neglect or failure to take reasonable preventative action by that Party, including:</p> <ul style="list-style-type: none"> <li>a) riots, civil commotion, war or armed conflict;</li> <li>b) acts of terrorism;</li> <li>c) acts of government, local government or regulatory bodies;</li> <li>d) fire, flood, storm or earthquake or other natural disaster,</li> </ul> <p>a) but excluding any industrial dispute relating to the Supplier, the Supplier Staff or any other failure in the Supplier or the Subcontractor's supply chain;</p>
<b>"Force Majeure Notice"</b>	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
<b>"Framework Award Form"</b>	the document outlining the Framework Incorporated Terms and crucial information required for the Framework Contract, to be executed by the Supplier and CCS;
<b>"Framework Contract"</b>	the framework agreement established between CCS and the Supplier in accordance with Regulation 33 by the Framework Award Form for the provision of the Deliverables to Buyers by the Supplier pursuant to the notice published on the Find a Tender Service;
<b>"Framework Contract Period"</b>	the period from the Framework Start Date until the End Date of the Framework Contract;
<b>"Framework Expiry Date"</b>	the scheduled date of the end of the Framework Contract as stated in the Framework Award Form;
<b>"Framework Incorporated Terms"</b>	the contractual terms applicable to the Framework Contract specified in the Framework Award Form;
<b>"Framework Optional Extension Period"</b>	such period or periods beyond which the Framework Contract Period may be extended as specified in the Framework Award Form;
<b>"Framework Price(s)"</b>	the price(s) applicable to the provision of the Deliverables set out in Framework Schedule 3 (Framework Prices);
<b>"Framework Special Terms"</b>	any additional terms and conditions specified in the Framework Award Form incorporated into the Framework Contract;

<b>"Framework Start Date"</b>	the date of start of the Framework Contract as stated in the Framework Award Form;
<b>"Framework Tender Response"</b>	the tender submitted by the Supplier to CCS and annexed to or referred to in Framework Schedule 2 (Framework Tender);
<b>"Further Competition Procedure"</b>	the further competition procedure described in Framework Schedule 7 (Call-Off Award Procedure);
<b>"General Anti-Abuse Rule"</b>	<p>a) the legislation in Part 5 of the Finance Act 2013 and; and</p> <p>b) any future legislation introduced into parliament to counteract Tax advantages arising from abusive arrangements to avoid National Insurance contributions;</p>
<b>"General Change in Law"</b>	a Change in Law where the change is of a general legislative nature (including Tax or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>"Goods"</b>	goods made available by the Supplier as specified in Framework Schedule 1 (Specification) and in relation to a Call-Off Contract as specified in the Order Form;
<b>"Good Industry Practice"</b>	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;
<b>"Government"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Government Data"</b>	the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of

	<p>the Authority's Confidential Information, and which:</p> <p>a) are supplied to the Supplier by or on behalf of the Authority;</p> <p>b) the Supplier is required to generate, process, store or transmit pursuant to a Contract;</p> <p>c) any Personal Data for which CCS or the Buyer is the Controller; or</p> <p>d) all Buyer Registration Process data submitted by Buyers into the Platform, including the full auditable history of any and all transactions and procedures conducted via the Platform;</p>
<b>"Group of Economic Operators"</b>	a group of economic operators acting jointly and severally to provide the Deliverables, which shall include a consortium;
<b>"Guarantor"</b>	the person (if any) who has entered into a guarantee in the form set out in Joint Schedule 8 (Guarantee) in relation to this Contract;
<b>"Halifax Abuse Principle"</b>	the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HMRC"</b>	Her Majesty's Revenue and Customs;
<b>"Hourly Rate"</b>	the Pricing Mechanism where the Supplier will invoice the Buyer for the work undertaken by Supplier Staff providing the Deliverables (or one or more of the elements of the Deliverables) under the Contract (and, if applicable, each SOW) based on the division of the applicable Supplier Staff Day Rate by no less than 7.5 being the applicable Work Day where the Supplier's Staff's the applicable Supplier Staff grade is set out in Annex 1 of Framework Schedule 3 (Framework Prices);
<b>"ICT Policy"</b>	the Buyer's policy and any Platform policy in respect of information and communications technology, referred to in the Order Form, which is in force as at the Call-Off Start Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;

<b>"Impact Assessment"</b>	<p>an assessment of the impact of a Variation request by the Relevant Authority completed in good faith, including:</p> <ul style="list-style-type: none"> <li>a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract;</li> <li>b) details of the cost of implementing the proposed Variation;</li> <li>c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Framework Prices/Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;</li> <li>d) a timetable for the implementation, together with any proposals for the testing of the Variation; and</li> <li>e) such other information as the Relevant Authority may reasonably request in (or in response to) the Variation request;</li> </ul>
<b>"Implementation Plan"</b>	<p>the plan for provision of the Deliverables set out in Call-Off Schedule 13 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;</p>
<b>"Incremental Fixed Price"</b>	<p>the Price Mechanism where the overall Statement of Work is based on Capped Time and Materials, but where the prices for individual Deliverables Increments are fixed prior to the work being undertaken. The Charges for the first Deliverable Increment or Deliverables Increments for the Statement of Work will be fixed, but the Charges for subsequent Deliverables Increments will be reviewed and refined prior to the execution of each subsequent Deliverables Increment within the same Statement of Work;</p>
<b>"Indemnifier"</b>	<p>a Party from whom an indemnity is sought under this Contract;</p>
<b>"Independent Control"</b>	<p>where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Controller providing it</p>

	with Personal Data and “Independent Controller” shall be construed accordingly;
<b>"Indexation"</b>	the adjustment of an amount or sum in accordance with Framework Schedule 3 (Framework Prices) and the relevant Order Form;
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;
<b>"Information Commissioner"</b>	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
<b>"Initial Period"</b>	the initial term of a Contract specified in the Framework Award Form or the Order Form, as the context requires;
<b>"Insolvency Event"</b>	<p>with respect to any person, means:</p> <p>(a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:</p> <p>(i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or</p> <p>(ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;</p> <p>(b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</p> <p>(c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;</p> <p>(d) a creditor or encumbrancer of that person attaches or takes possession of, or</p>



	<p>a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within 14 days;</p> <p>(e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;</p> <p>(f) where that person is a company, a LLP or a partnership:</p> <p>(i) a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</p> <p>(ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;</p> <p>(iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or</p> <p>(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or</p> <p>(g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;</p>
<b>"Installation Works"</b>	all works which the Supplier is to carry out at any time during the Call-Off Contract Period to install the Goods in accordance with the Call-Off Contract and, if applicable, each SOW;
<b>"Intellectual Property Rights" or "IPR"</b>	<p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs,</p>

	<p>Know-How, trade secrets and other rights in Confidential Information;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction and the right to sue for passing off;</p>
<b>"Invoicing Address"</b>	the address to which the Supplier shall invoice the Buyer as specified in the Order Form;
<b>"IPR Claim"</b>	any action, suit, claim, demand, Loss or other liability which the Relevant Authority or Central Government Body may suffer or incur as a result of any claim that the performance of the Deliverables infringes or allegedly infringes (including the defence of such infringement or alleged infringement or passing off) of any third party IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Relevant Authority in the fulfilment of its obligations under a Contract;
<b>"IR35"</b>	<p>the off-payroll rules requiring individuals who work through their company pay the same income tax and National Insurance contributions as an employee which can be found online at:</p> <p><a href="https://www.gov.uk/guidance/ir35-find-out-if-it-applies">https://www.gov.uk/guidance/ir35-find-out-if-it-applies</a>;</p>
<b>"Joint Controller Agreement"</b>	the agreement (if any) entered into between the Relevant Authority and the Supplier substantially in the form set out in Annex 2 of Joint Schedule 11 (Processing Data);
<b>"Joint Controllers"</b>	where two or more Controllers jointly determine the purposes and means of Processing;
<b>"Joint Control"</b>	where two or more Controllers agree jointly to determine the purposes and means of Processing Personal Data;
<b>"Key Staff"</b>	the individuals (if any) identified as such in the Order Form and any Statement of Work;
<b>"Key Sub-Contract"</b>	each Sub-Contract with a Key Subcontractor;

<b>"Key Subcontractor"</b>	<p>any Subcontractor:</p> <p>a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or</p> <p>b) which, in the opinion of CCS or the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or</p> <p>c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Call-Off Contract,</p> <p>and the Supplier shall list all such Key Subcontractors in section 19 of the Framework Award Form and in the Key Subcontractor Section in Order Form;</p>
<b>"Know-How"</b>	<p>all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the applicable Start Date;</p>
<b>"Law"</b>	<p>any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply;</p>
<b>"Location"</b>	<p>the place at or from which the Supplier's team will provide the Services under the Call-Off Contract and, if applicable, each SOW;</p>
<b>"Losses"</b>	<p>all losses, liabilities, damages, costs, expenses (including legal and professional fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;</p>
<b>"Lots"</b>	<p>the number of lots specified in Framework Schedule 1 (Specification), if applicable;</p>

<b>"Management Charge"</b>	the sum specified in the Framework Award Form payable by the Supplier to CCS in accordance with Framework Schedule 5 (Management Charges and Information);
<b>"Management Information" or "MI"</b>	the management information specified in Framework Schedule 5 (Management Charges and Information);
<b>"Material KPIs"</b>	are Key Performance Indicators which are identified by the Buyer as having a material impact on the performance of the Call-Off Contract;
<b>"MI Default"</b>	when two (2) MI Reports are not provided in any rolling six (6) Month period
<b>"MI Failure"</b>	when an MI report: a) contains any material errors or material omissions or a missing mandatory field; or b) is submitted using an incorrect MI reporting Template; or c) is not submitted by the reporting date (including where a declaration of no business should have been filed);
<b>"MI Report"</b>	a report containing Management Information submitted to the Authority in accordance with Framework Schedule 5 (Management Charges and Information);
<b>"MI Reporting Template"</b>	the form of report set out in the Annex to Framework Schedule 5 (Management Charges and Information) setting out the information the Supplier is required to supply to the Authority;
<b>"Milestone"</b>	an event or task described in the Implementation Plan or Statement of Work;
<b>"Milestone Date"</b>	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>"Misconduct"</b>	has the meaning given to it in Paragraph 7.2 of Framework Schedule 7 (Call-Off Award Procedure);
<b>"Month"</b>	a calendar month and "Monthly" shall be interpreted accordingly;
<b>"National Insurance"</b>	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);

<b>"New IPR"</b>	<p>a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of a Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>b) IPR in or arising as a result of the performance of the Supplier's obligations under a Contract and all updates and amendments to the same;</p> <p>but shall not include the Supplier's Existing IPR;</p>
<b>"Occasion of Tax Non-Compliance"</b>	<p>where:</p> <p>a) any Tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any Tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</p> <p>b) any Tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for Tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion;</p>
<b>"Off-Payroll Worker"</b>	<p>a worker (or contractor), not employed by the Supplier or any other organisation within the supply chain, that provides their services through their own private limited company or other type of intermediary which may include the worker's own personal service company, a partnership or an individual;</p>

<b>"Open Book Data"</b>	<p>complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Call-Off Contract, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> <li>a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Deliverables;</li> <li>b) operating expenditure relating to the provision of the Deliverables including an analysis showing: <ul style="list-style-type: none"> <li>i) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;</li> <li>ii) staff costs broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each grade;</li> <li>iii) a list of Costs underpinning those rates for each grade, being the agreed rate less the Supplier Profit Margin; and</li> <li>iv) Reimbursable Expenses, if allowed under the Order Form;</li> </ul> </li> <li>c) Overheads;</li> <li>d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;</li> <li>e) the Supplier Profit achieved over the Framework Contract Period and on an annual basis;</li> <li>f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</li> <li>g) an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and</li> <li>h) the actual Costs profile for each Service Period;</li> </ul>
<b>"Option"</b>	<p>the selection of an option by the Buyer which is incorporated into the Call-Off Contract and, if applicable, any Statement</p>

	of Work, which the Supplier must comply with;
<b>"Optional Extension Period"</b>	is the Buyer's maximum optional extension period to the Call-Off Initial Period as set out in the Order Form;
<b>"Order"</b>	an order for the provision of the Deliverables placed by a Buyer with the Supplier under a Contract;
<b>"Order Form"</b>	a completed Order Form Template (or equivalent information issued by the Buyer) used to create a Call-Off Contract;
<b>"Order Form Template"</b>	the template in Framework Schedule 6 (Order Form Template, SOW Template and Call-Off Schedules);
<b>"Other Contracting Authority"</b>	any actual or potential Buyer under the Framework Contract;
<b>"Outward Exchange"</b>	an exchange of Supplier Staff from the Supplier to the Buyer in accordance with the Secondment Agreement;
<b>"Overhead"</b>	those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs";
<b>"Parliament"</b>	takes its natural meaning as interpreted by Law;
<b>"Party"</b>	in the context of the Framework Contract, CCS or the Supplier, and in the context of a Call-Off Contract the Buyer or the Supplier. "Parties" shall mean both of them where the context permits;
<b>"Performance Indicators" or "PIs"</b>	the performance measurements and targets in respect of the Supplier's performance of the Framework Contract set out in Framework Schedule 4 (Framework Management);
<b>"Personal Data"</b>	has the meaning given to it in the UK GDPR;

<b>“Personal Data Breach”</b>	has the meaning given to it in the UK GDPR;
<b>“Personnel”</b>	all directors, officers, employees, agents, consultants and suppliers of the Relevant Authority and/or their subcontractor and/or Subprocessor (as detailed in Joint Schedule 11 (Processing Data)) engaged in the performance of its obligations under a Contract;
<b>“Place of Performance”</b>	the place or location at which the Deliverables, in whole or part, shall be performed;
<b>“Platform”</b>	the platform, site or system (also known as ‘Contract-a-Thing’) operated on behalf of CCS which requires a potential Buyer to complete the Buyer Registration Procedure and specify its Authorised Users who may access and use the platform, site or system on behalf of the Buyer and use it to assist in selecting or shortlisting suppliers when undertaking a Call-Off Procedure in accordance with Framework Schedule 7, to Order Deliverables under a Contract;
<b>"Prescribed Person"</b>	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in ‘Whistleblowing: list of prescribed people and bodies’, 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a> ;
<b>“Pricing Matrix”</b>	the pricing matrix of the Supplier may be found in the Platform and also in Annex 1 (Pricing Matrix) of Framework Schedule 3 (Framework Prices) which sets out the maximum Day Rates for each DDaT role for all Supplier Staff under the Contract;
<b>“Pricing Mechanism”</b>	the pricing mechanisms are (a) Capped Time and Materials, (b) Incremental Fixed Prices, (c) Time and Materials, (d) Fixed Price, and (e) a combination of two or more of these as set out in Framework Schedule 3 (Framework Prices) and Framework Schedule 7 (Call-Off Award Procedure) and as may be refined in the Further Competition Procedure;



<b>"Pricing Tool"</b>	the tool to be used by Buyers as part of the Call-Off Procedure which is set out in Annex D (Pricing Tool) of Framework Schedule 7 (Call-Off Award Procedure);
<b>"Processing"</b>	has the meaning given to it in the UK GDPR;
<b>"Processor"</b>	has the meaning given to it in the UK GDPR;
<b>"Progress Meeting"</b>	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
<b>"Progress Meeting Frequency"</b>	the frequency at which the Supplier shall conduct a Progress Meeting in accordance with Clause 6.1 as specified in the Order Form;
<b>"Progress Report"</b>	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
<b>"Progress Report Frequency"</b>	the frequency at which the Supplier shall deliver Progress Reports in accordance with Clause 6.1 as specified in the Order Form;
<b>"Prohibited Acts"</b>	<p>a) to directly or indirectly offer, promise or give any person working for or engaged by a Buyer or any other public body a financial or other advantage to:</p> <p>i) induce that person to perform improperly a relevant function or activity; or</p> <p>ii) reward that person for improper performance of a relevant function or activity;</p> <p>b) 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 each Contract; or</p> <p>c) committing any offence:</p> <p>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</p> <p>ii) under legislation or common law concerning fraudulent acts; or</p> <p>iii) defrauding, attempting to defraud or conspiring to defraud a Buyer or other public body; or</p> <p>d) any activity, practice or conduct which would constitute one of the offences listed</p>

	under (c) above if such activity, practice or conduct had been carried out in the UK;
<b>"Protective Measures"</b>	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Framework Schedule 9 (Cyber Essentials Scheme), if applicable, in the case of the Framework Contract or Call-Off Schedule 9 (Security), if applicable, in the case of a Call-Off Contract.
<b>"Recall"</b>	a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the right IPR rights) that might endanger health or hinder performance;
<b>"Recipient Party"</b>	the Party which receives or obtains directly or indirectly Confidential Information;
<b>"Rectification Plan"</b>	the Supplier's plan (or revised plan) to rectify it's breach using the template in Joint Schedule 10 (Rectification Plan) which shall include: a) full details of the Default that has occurred, including a root cause analysis; b) the actual or anticipated effect of the Default; and c) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable);
<b>"Rectification Plan Process"</b>	the process set out in Clause 10.3.1 to 10.3.4 (Rectification Plan Process);
<b>"Regulations"</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);

<b>"Reimbursable Expenses"</b>	<p>the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:</p> <p>a) travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and</p> <p>b) subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;</p>
<b>"Relevant Authority"</b>	the Authority which is party to the Contract to which a right or obligation is owed, as the context requires;
<b>"Relevant Authority's Confidential Information"</b>	<p>a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Relevant Authority (including all Relevant Authority Existing IPR and New IPR);</p> <p>b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Relevant Authority's attention or into the Relevant Authority's possession in connection with a Contract; and</p> <p>c) information derived from any of the above;</p>
<b>"Relevant Requirements"</b>	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
<b>"Relevant Tax Authority"</b>	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;

<b>"Reminder Notice"</b>	a notice sent in accordance with Clause 10.5 given by the Supplier to the Buyer providing notification that payment has not been received on time;
<b>"Replacement Deliverables"</b>	any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables following the Call-Off Expiry Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Subcontractor"</b>	a Subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Subcontractor of any such Subcontractor);
<b>"Replacement Supplier"</b>	any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;
<b>"Request For Information"</b>	a request for information or an apparent request relating to a Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
<b>"Required Insurances"</b>	the insurances required by Joint Schedule 3 (Insurance Requirements) or any additional insurances specified in the Order Form;
<b>"Resource"</b>	the Buyer shall issue the Supplier and all Key Staff who are Off-Payroll Workers with a Status Determination Statement describing the IR35 status of each Supplier Staff in a key role or position being engaged to provide Services under the Contract;
<b>"Resource Profile"</b>	the capacity of the Supplier to provide various DDaT roles aggregated at Role Family level and is designed to understand what skills are available from the Supplier and any named Subcontractors in terms of approximate number of Supplier Staff and the level of security clearance that must have been obtained by the Supplier Staff prior to commencement on a relevant Call-Off Contract;
<b>"Restricted Staff"</b>	any person employed or engaged by either Party, in the capacity of director or in any research, technical, IT, security, engineering, procurement, financial, legal or

	managerial role who has been engaged in the provision of the Deliverables or management of the Contract either as principal, agent, employee, independent contractor or in any other form of employment or engagement over the previous 12 Months, directly worked with or had any material dealings, but shall not include any person employed or engaged in an administrative, clerical, manual or secretarial capacity;
<b>“Retained EU Law”</b>	the category of UK Law created under Section 2 to 4 of the European Union (Withdrawal) Act 2018 at the end of the transition period following the repeal of the savings to the European Communities Act 1972;
<b>“Request for Information” or “RFI” Tool</b>	the functional tool within the Platform (or as otherwise described in Framework Schedule 7 (Call-Off Award Procedure) to be used by Buyers to seek clarification or additional information from one or more suppliers that will assist the Buyer in preparing its Statement of Requirement, planning and conducting its Call-Off Procedure ,before undertaking a Call-Off Procedure in accordance with Framework Schedule 7 (Call-Off Award Procedure);
<b>“Role Family”</b>	the grouping of related roles or professions which share common skills and capabilities;
<b>"Satisfaction Certificate"</b>	the certificate (materially in the form of the document contained in of Part B of Call-Off Schedule 13 (Implementation Plan and Testing) or as agreed by the Parties where Call-Off Schedule 13 is not used in this Contract) granted by the Buyer when the Supplier has met all of the requirements of an Order, Achieved a Milestone or a Test;
<b>“Scalability”</b>	the potential size of the Supplier team needed to fulfil the Buyer requirements;
<b>“Secondment”</b>	the temporary transfer of one or more Supplier Staff from the Supplier to the Buyer to another position or employment, in accordance with the Secondment Agreement for the Secondment Charge; and “Secondee” is a person on a Secondment;

<b>"Secondment Agreement"</b>	the agreement entered into between the Supplier and Buyer regarding an Inward Exchange or an Outward Exchange or a Secondment which shall be in the form and format of the Call-Off Schedule 26 (Secondment Agreement Template);
<b>"Secondment Charge"</b>	the Charge for Supplier Staff on an Outward Secondment which shall be no more than the base salary and any relevant pension contributions ordinarily payable by the Supplier in respect of a Seconded (inclusive of VAT);
<b>"Security Management Plan"</b>	the Supplier's security management plan prepared pursuant to Call-Off Schedule 9 (Security) (if applicable);
<b>"Security Policy"</b>	the Buyer's security policy, referred to in the Order Form, in force as at the Call-Off Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
<b>"Self Audit Certificate"</b>	the certificate in the form as set out in Framework Schedule 8 (Self Audit Certificate);
<b>"Serious Fraud Office"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Service Capability"</b>	the Service capabilities of the Supplier as set out in Annex 2 of Framework Schedule 1 (Specification) which are grouped under the following headings under which there are a number of sub-capabilities: 1. Performance analysis and data; 2. Security; 3. Service delivery; 4. Software development; 5. Support and operations; 6. Testing and auditing; 7. User experience; and 8. User research;
<b>"Service Levels"</b>	any service levels applicable to the provision of the Deliverables under the Call Off Contract (which, where Call Off Schedule 14 (Service Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule);
<b>"Service Period"</b>	has the meaning given to it in the Order Form;

<b>"Service Provision"</b>	one or more of the service provisions set out in Paragraph 1.1 of Framework Schedule 1 (Specification);
<b>"Services"</b>	services made available by the Supplier as specified in Framework Schedule 1 (Specification) and in relation to a Call-Off Contract as specified in the Order Form and each Statement of Work;
<b>"Service Transfer"</b>	any transfer of the Deliverables (or any part of the Deliverables), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;
<b>"Service Transfer Date"</b>	the date of a Service Transfer;
<b>"Sites"</b>	any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: a) the Deliverables are (or are to be) provided; or b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;
<b>"SME"</b>	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;
<b>"Special Terms"</b>	any additional Clauses set out in the Framework Award Form or Order Form which shall form part of the respective Contract;
<b>"Specific Change in Law"</b>	a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start Date;
<b>"Specification"</b>	the specification set out in Framework Schedule 1 (Specification), as may, in relation to a Call-Off Contract, be supplemented by the Order Form and, if applicable, each Statement of Work;
<b>"Standards"</b>	any: a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International

	<p>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 Supplier would reasonably and ordinarily be expected to comply with;</p> <p>b) standards detailed in the specification in Schedule 1 (Specification);</p> <p>c) standards detailed by the Buyer in the Order Form, Statement of Work or agreed between the Parties from time to time;</p> <p>d) relevant Government codes of practice and guidance applicable from time to time;</p>
<b>"Start Date"</b>	in the case of the Framework Contract, the date specified on the Framework Award Form, and in the case of a Call-Off Contract, the date specified in the Order Form, and in the case of a Statement of Work, the date specified in that Statement of Work;
<b>"Statement of Requirements"</b>	a statement issued by the Buyer detailing its requirements in respect of Deliverables issued in accordance with the Call-Off Procedure;
<b>"Statement of Work" or "SOW"</b>	the document which, upon execution by the Buyer and Supplier, shall become incorporated into their Call-Off Contract and it outlines the agreed body of works to be undertaken as part of the Call-Off Contract Deliverables. There may be any number of Statements of Work incorporated into a Call-Off Contract and each Statement of Work may include (but is not limited to) the Statement of Requirements, identified output(s), completion date(s) and charging method(s);
<b>"Status Determination Statement" or "SDS"</b>	a statement that describes the determination reached by the Buyer/client on the employment status (i.e. IR35 status) of an Off-Payroll Worker for a particular Call-Off Contract or any element of work undertaken as part of any SOW, and the reasons for reaching that determination. The SDS must be passed to the worker and the person or organisation the client contracts with for the worker's services;



<b>"SOW End Date"</b>	the date up to and including this date when the supply of the Deliverables under the Statement of Work shall cease
<b>"SOW Start Date"</b>	the date of the start of the Statement of Works as stated in the SOW;
<b>"Storage Media"</b>	the part of any device that is capable of storing and retrieving data;
<b>"Sub-Contract"</b>	any contract or agreement (or proposed contract or agreement), other than a Call-Off Contract or the Framework Contract, pursuant to which a third party: a) provides the Deliverables (or any part of them); b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);
<b>"Subcontractor"</b>	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
<b>"Subprocessor"</b>	any third Party appointed to process Personal Data on behalf of that Processor related to a Contract;
<b>"Summary of Work"</b>	a short description of overview of the Buyer's Statement of Requirements;
<b>"Supplier"</b>	the person, firm or company identified in the Framework Award Form;
<b>"Supplier Assets"</b>	all assets and rights used by the Supplier to provide the Deliverables in accordance with the Call-Off Contract but excluding the Buyer Assets;
<b>"Supplier Authorised Representative"</b>	the representative appointed by the Supplier named in the Framework Award Form, or later defined in a Call-Off Contract;
<b>"Supplier Compliance Officer"</b>	the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
<b>"Supplier's Confidential Information"</b>	a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade

	<p>secrets, Know-How, and/or personnel of the Supplier;</p> <p>b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with a Contract;</p> <p>c) Information derived from any of (a) and (b) above;</p>
<b>"Supplier's Contract Manager"</b>	the person identified in the Order Form appointed by the Supplier to oversee the operation of the Call-Off Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;
<b>"Supplier Equipment"</b>	the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Call-Off Contract;
<b>"Supplier Marketing Contact"</b>	shall be the person identified in the Framework Award Form;
<b>"Supplier Non-Performance"</b>	<p>where the Supplier has failed to:</p> <p>a) Achieve a Milestone by its Milestone Date;</p> <p>b) provide the Goods and/or Services in accordance with the Service Levels; and/or</p> <p>c) comply with an obligation under a Contract;</p>
<b>"Supplier Profit"</b>	in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of a Call-Off Contract for the relevant period;
<b>"Supplier Profit Margin"</b>	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;

<b>"Supplier Staff"</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under a Contract;
<b>"Supporting Documentation"</b>	sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under the Call-Off Contract detailed in the information are properly payable;
<b>"Tax"</b>	<p>a) all forms of taxation whether direct or indirect;</p> <p>b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;</p> <p>c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and</p> <p>d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,</p> <p>in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;</p>
<b>"Termination Notice"</b>	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate a Contract on a specified date and setting out the grounds for termination;
<b>"Test Issue"</b>	any variance or non-conformity of the Deliverables from their requirements as set out in a Call-Off Contract;
<b>"Test Plan"</b>	<p>a plan:</p> <p>a) for the Testing of the Deliverables; and</p> <p>b) setting out other agreed criteria related to the achievement of Milestones;</p>
<b>"Tests "</b>	any tests required to be carried out pursuant to a Call-Off Contract as set out in the Test Plan or elsewhere in a Call-Off Contract and "Tested" and "Testing" shall be construed accordingly;

<b>"Third Party IPR"</b>	Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
<b>"Time and Materials"</b>	a Pricing Mechanism whereby the Buyer agrees to pay the Supplier for the work performed by the Supplier Staff, based on no more than the pro rata division of the Day Rates by 7.5 to provide an Hourly Rate for the applicable grade of Supplier Staff who undertook the work (as set out in Annex 1 of Framework Schedule 3 (Framework Prices)) and for the materials used in the project based on pre-agreed material disclosures and subject to time approval by the Buyer;
<b>"Transferring Supplier Employees"</b>	those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date;
<b>"Transparency Information"</b>	the Transparency Reports and the content of a Contract, including any changes to this Contract agreed from time to time, except for – a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Relevant Authority; and b) Commercially Sensitive Information;
<b>"Transparency Reports"</b>	the information relating to the Deliverables and performance of the Contracts which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Call-Off Schedule 1 (Transparency Reports);
<b>"UK GDPR"</b>	the Retained EU Law version of the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>"User Terms"</b>	the terms of use applicable to all Buyer's Authorised Users who access and use the Platform which are available at:[Insert link];
<b>"Variation"</b>	any change to a Contract, including any change to a SOW under a Call-Off Contract;
<b>"Variation Form"</b>	the form set out in Joint Schedule 2 (Variation Form);

<b>"Variation Procedure"</b>	the procedure set out in Clause 24 (Changing the contract);
<b>"VAT"</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"VCSE"</b>	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
<b>"Worker"</b>	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Deliverables;
<b>"Worker Engagement Status"</b>	the details of the labour supply chain through which the Worker is engaged as Supplier Staff, for example, the Worker could be: (a) "employed by the Supplier the Buyer contracts with"; (b) "employed by another organisation within the supply chain, e.g. an agency or umbrella company"; (c) "an off-payroll worker engaged via an intermediary e.g. the worker's own personal service company"; or (d) "an independent sole trader";
<b>"Working Day"</b>	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Order Form;
<b>"Work Day"</b>	a minimum of 7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day; and
<b>"Work Hours"</b>	the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks.

## Joint Schedule 2 (Variation Form)

This form is to be used in order to change a contract in accordance with Clause 24 (Changing the contract):

Contract Details		
This variation is between:	[delete as applicable: CCS / Buyer] ("CCS" / "the Buyer") And [insert name of Supplier] ("the Supplier")	
Contract Name:	[insert name of contract to be changed] ("the Contract")	
Contract reference number:	[insert contract reference number]	
[Statement of Work (SOW) reference:]	[insert SOW reference number and title (if applicable) or delete row]	
[Buyer reference:]	[insert cost centre/portfolio codes as appropriate] Details of Proposed Variation	
Details of Proposed Variation		
Variation initiated by:	[delete as applicable: CCS/Buyer/Supplier]	
Variation number	[insert variation number]	
Date variation is raised	[insert date]	
Proposed variation	[insert detail here or use Annex 1 below]	
Reason for the variation:	[insert reason]	
An Impact Assessment shall be provided within:	[insert number] days	
Impact of Variation		
Likely impact of the proposed variation		
Outcome of Variation		
Contract variation	This Contract detailed above is varied as follows:  · [CCS/Buyer to insert original Clauses or Paragraphs to be varied and the changed clause]  · [reference Annex 1 as appropriate]	
Financial variation	Original Contract Value:	£ [insert amount]
	Additional cost due to variation	£ [insert amount]
	New Contract value:	
[Timescale variation/s:]	[insert changes to dates/milestones or delete row]	

1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by **[delete]** as applicable: CCS / Buyer]
2. Words and expressions in this Variation shall have the meanings given to them in the Contract. The 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 **[delete]** as applicable: CCS / Buyer]

Signature

Date

Name (in capitals)

Job Title

Address

-----

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

Signature

Date

Name (in capitals)

Job Title

Address

-----

## ANNEX 1

**[insert]** details as required]

## Joint Schedule 3 (Insurance Requirements)

### 1. The insurance the Supplier needs to have

1.1 The Supplier shall take out and maintain, or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule, any additional insurances required under a Call-Off Contract (specified in the applicable Order Form) ("**Additional Insurances**") and any other insurances as may be required by applicable Law (together the "**Insurances**"). The Supplier shall ensure that each of the Insurances is effective no later than:

1.1.1 the Framework Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and

1.1.2 the Call-Off Contract Effective Date in respect of the Additional Insurances.

1.2 The Insurances shall be:

1.2.1 maintained in accordance with Good Industry Practice;

1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;

1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and

1.2.4 maintained for the Contract Period and for at least six (6) years after the End Date.

1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Relevant Authority shall be indemnified in respect of claims made against the Relevant Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

### 2. How to manage the insurance

2.1 Without limiting the other provisions of this Contract, the Supplier shall:

2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;

2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and

2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other



evidence of placing cover representing any of the Insurances to which it is a party.

### **3. What happens if the Supplier is not insured**

3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

3.2 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Relevant Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

### **4. Evidence of insurance to be provided**

4.1 The Supplier shall upon the Start Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Relevant Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

### **5. Required amount of insurance**

5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Supplier shall notify the Relevant Authority and provide details of its proposed solution for maintaining the minimum limit of indemnity.

### **6. Cancelled Insurance**

6.1 The Supplier shall notify the Relevant Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

6.2 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Relevant Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

### **7. Insurance claims**

7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or each Contract for which it may be entitled to claim under any of the Insurances. In the event that the Relevant Authority receives a claim relating to or arising out of a Contract or the Deliverables, the Supplier shall co-operate with the Relevant Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

7.2 Except where the Relevant Authority is the claimant party, the Supplier shall give the Relevant Authority notice within twenty (20) Working Days after any insurance claim in

excess of 10% of the sum required to be insured pursuant to Paragraph 5.1 relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Relevant Authority) full details of the incident giving rise to the claim.

7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Relevant Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

#### **ANNEX: REQUIRED INSURANCES**

1. The Supplier shall hold the following insurance cover from the Framework Start Date in accordance with this Schedule:

1.1 professional indemnity insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000);

1.2 public liability and products insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000); and

1.3 employers' liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000).

## Joint Schedule 4 (Commercially Sensitive Information)

### 1. What is the Commercially Sensitive Information?

- 1.1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Order Form (which shall be deemed incorporated into the table below).
- 1.3 Without prejudice to the Relevant Authority's obligation to disclose Information in accordance with FOIA or Clause 16 (When you can share information), the Relevant Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
1	05/06/2023	Supplier rate card	Perpetual
2	05/06/2023	Tender submission	Perpetual

## **Joint Schedule 6 (Key Subcontractors)**

### **1. Restrictions on certain subcontractors**

1.1 The Supplier is entitled, unless the Buyer states to the contrary, to sub-contract its obligations under each Call-Off Contract to the Key Subcontractors set out in the Call-Off Order Form.

1.2 Subject to Paragraph 1.1, the Supplier is entitled to sub-contract some of its obligations under a Call-Off Contract to Key Subcontractors who are specifically nominated in the Order Form.

1.3 Where during the Contract Period the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Subcontractor, it must obtain the prior written consent of the Buyer and the Supplier shall, at the time of requesting such consent, provide the Buyer with the information detailed in Paragraph 1.4. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. Where the Buyer consents to the appointment of a new Key Subcontractor then they will be added to the Key Subcontractor section of the Order Form. The Buyer may reasonably withhold their consent to the appointment of a Key Subcontractor if it considers that:

1.3.1 the appointment of a proposed Key Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;

1.3.2 the proposed Key Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or

1.3.3 the proposed Key Subcontractor employs unfit persons.

1.4 The Supplier shall provide CCS and the Buyer with the following information in respect of the proposed Key Subcontractor:

1.4.1 the proposed Key Subcontractor's name, registered office and company registration number;

1.4.2 the name and details of the directors, employees, agents, consultants and contractors of the subcontractor engaged in the performance of the Supplier's obligations under the Contract. Details should include: name; role; email address; address; contract details; Worker Engagement Route – for example, employed by subcontractor; engaged via worker's intermediary e.g. PSC (i.e. a personal service company), engaged as an independent sole trader or employed by another entity in supply chain;

1.4.3 the scope/description of any Deliverables to be provided by the proposed Key Subcontractor;

1.4.4 where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of CCS and the Buyer that the proposed Key Sub-Contract has been agreed on "arm's length" terms;

1.4.5 for the Buyer, the Key Sub-Contract price expressed as a percentage of the total projected Charges over the Call Off Contract Period; and

1.4.6 (where applicable) the Credit Rating Threshold (as defined in Joint Schedule 7 (Financial Distress)) of the Key Subcontractor.

1.5 If requested by CCS and/or the Buyer, within 10 Working Days, the Supplier shall also provide:

1.5.1 a copy of the proposed Key Sub-Contract; and

1.5.2 any further information reasonably requested by CCS and/or the Buyer.

1.6 The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:

1.6.1 provisions which will enable the Supplier to discharge its obligations under the Contracts;

1.6.2 a right under CRTPA for CCS and the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon CCS and the Buyer respectively;

1.6.3 a provision enabling CCS and the Buyer to enforce the Key Sub-Contract as if it were the Supplier;

1.6.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to CCS and/or the Buyer;

1.6.5 obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under the Framework Contract in respect of:

(a) the data protection requirements set out in Clause 14 (Data protection);

(b) the FOIA and other access request requirements set out in Clause 16 (When you can share information);

(c) the obligation not to embarrass CCS or the Buyer or otherwise bring CCS or the Buyer into disrepute;

(d) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and

(e) the conduct of audits set out in Clause 6 (Record keeping and reporting);

1.6.6 provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on CCS and the Buyer under Clauses 10.4 (When CCS or the buyer can end this contract) and 10.5 (When the supplier can end the contract) of this Contract; and

1.6.7 a provision restricting the ability of the Key Subcontractor to sub-contract all or any part of the provision of the Deliverables provided to the Supplier under the Key Sub-Contract without first seeking the written consent of CCS and the Buyer.

## Joint Schedule 7 (Financial Difficulties)

### 1. Definitions

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

<b>"Credit Rating Threshold"</b>	1 the minimum credit rating level for the Monitored Company as set out in Annex 2 and
<b>"Financial Distress Event"</b>	2 the occurrence or one or more of the following events: <ul style="list-style-type: none"><li>a) the credit rating of the Monitored Company dropping below the applicable Credit Rating Threshold;</li><li>b) the Monitored Company issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;</li><li>c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Monitored Company;</li><li>d) Monitored Company committing a material breach of covenant to its lenders;</li><li>e) a Key Subcontractor (where applicable) notifying CCS that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or</li><li>f) any of the following:<ul style="list-style-type: none"><li>i) commencement of any litigation against the Monitored Company with respect to financial indebtedness or obligations under a contract;</li><li>ii) non-payment by the Monitored Company of any financial indebtedness;</li></ul></li></ul>

- iii) any financial indebtedness of the Monitored Company becoming due as a result of an event of default; or
- iv) the cancellation or suspension of any financial indebtedness in respect of the Monitored Company

3 in each case which CCS reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance of any Contract and delivery of the Deliverables in accordance with any Call-Off Contract;

**"Financial Service Plan"**      **Distress Continuity**

4 a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with [each Call-Off] Contract in the event that a Financial Distress Event occurs;

**"Monitored Company"**

5 Supplier [Guarantor] or any Key Subcontractor]

**"Rating Agencies"**

6 the rating agencies listed in Annex 1.

## 2. When this Schedule applies

2.1 The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the Monitored Companies and the consequences of a change to that financial standing.

2.2 The terms of this Schedule shall survive:

2.2.1 under the Framework Contract until the later of (a) the termination or expiry of the Framework Contract or (b) the latest date of termination or expiry of any call-off contract entered into under the Framework Contract (which might be after the date of termination or expiry of the Framework Contract); and

2.2.2 under the Call-Off Contract until the termination or expiry of the Call-Off Contract.

## 3. What happens when your credit rating changes

3.1 The Supplier warrants and represents to CCS that as at the Start Date the long term credit ratings issued for the Monitored Companies by each of the Rating Agencies are as set out in Annex 2.

3.2 The Supplier shall promptly (and in any event within five (5) Working Days) notify CCS in writing if there is any downgrade in the credit rating issued by any Rating Agency for a Monitored Company.

3.3 If there is any downgrade credit rating issued by any Rating Agency for the Monitored Company the Supplier shall ensure that the Monitored Company's auditors thereafter

provide CCS within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by CCS (such requests not to exceed 4 in any Contract Year) with sufficient working accounts to allow further validation of financial status to be undertaken.

3.4The Supplier shall:

- 3.4.1 regularly monitor the credit ratings of each Monitored Company with the Rating Agencies; and
- 3.4.2 promptly notify (or shall procure that its auditors promptly notify) CCS and Buyers in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.

3.5For the purposes of determining whether a Financial Distress Event has occurred the credit rating of the Monitored Company shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Monitored Company at or below the applicable Credit Rating Threshold.

#### **4. What happens if there is a financial distress event**

4.1In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if CCS becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and CCS shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.

4.2 Not Used [In the event that a Financial Distress Event arises due to a Key Subcontractor notifying CCS that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, CCS shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier ten (10) Working Days to:

- 4.2.1 rectify such late or non-payment; or
- 4.2.2 demonstrate to CCS's reasonable satisfaction that there is a valid reason for late or non-payment.]

4.3The Supplier shall and shall procure that the other Monitored Companies shall:

- 4.3.1 at the request of CCS meet CCS as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of each Contract and delivery of the Deliverables in accordance each Call-Off Contract; and
- 4.3.2 where CCS or Buyers reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3.1 which CCS may share with Buyers) that the Financial Distress Event could impact on the continued performance of each Contract and delivery of the Deliverables in accordance with each Call-Off Contract:



- (a) submit to CCS for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event); and
- (b) provide such financial information relating to the Monitored Company as CCS may reasonably require.

4.4 If CCS does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to CCS within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by CCS or referred to the Dispute Resolution Procedure.

4.5 If CCS considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

4.6 Following Approval of the Financial Distress Service Continuity Plan by CCS, the Supplier shall:

- 4.6.1 on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance each Contract and delivery of the Deliverables in accordance with each Call-Off Contract;
- 4.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 4.6.1, submit an updated Financial Distress Service Continuity Plan to CCS for its Approval, and the provisions of Paragraphs 4.5 and 4.6 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
- 4.6.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify CCS and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 4.6.

4.8 CCS shall be able to share any information it receives from the Buyer in accordance with this Paragraph with any Buyer who has entered into a Call-Off Contract with the Supplier.

## **5. When CCS or the Buyer can terminate for financial distress**

5.1 CCS shall be entitled to terminate this Contract and Buyers shall be entitled to terminate their Call-Off Contracts for material Default if:

- 5.1.1 the Supplier fails to notify CCS of a Financial Distress Event in accordance with Paragraph 3.4;

- 5.1.2 CCS and the Supplier fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 4.3 to 4.5;
- 5.1.3 in the case of the Buyer, the Supplier fails to agree a Financial Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) that ensures the continued performance of the Contract and delivery of the Deliverables under its Contract; and/or
- 5.1.4 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 4.6.3.

## **6. What happens If your credit rating is still good**

6.1 Without prejudice to the Supplier's obligations and CCS' and the Buyer's rights and remedies under Paragraph 5, if, following the occurrence of a Financial Distress Event, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

- 6.1.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6; and
- 6.1.2 CCS shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3.2(b).

## **ANNEX 1: RATING AGENCIES**

Dun and Bradstreet ("D&B")

## **ANNEX 2: CREDIT RATINGS & CREDIT RATING THRESHOLDS**

### **Part 1: Current Rating**

<b>Entity</b>	<b>Credit rating (long term)</b>
Supplier	2
Guarantor	
Key Subcontractor	

## Joint Schedule 10 (Rectification Plan)

Request for [Revised] Rectification Plan			
Details of the Default:	[Guidance: Explain the Default, with clear Schedule, Clause and Paragraph references as appropriate]		
Deadline for receiving the [Revised] Rectification Plan:	[add date (minimum 10 days from request)]		
Signed by [CCS/Buyer]		Date:	
Supplier [Revised] Rectification Plan			
Cause of the Default	[add cause]		
Anticipated Impact	[add impact]		
Actual effect of Default:	[add effect]		
Steps to be taken to rectification	Steps	Timescale	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[..]	[date]	
Timescale for complete rectification of default	[X] working days		
Steps taken to prevent recurrence of Default	Steps	Timescale	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[..]	[date]	
Signed by the supplier:		Date:	
Review of rectification plan [CCS/Buyer]			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for rejection if applicable	[add reasons]		
Signed by [CCS/Buyer]		Date:	

# Joint Schedule 11 (Processing Data)

## Definitions

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

**“Processor Personnel”** all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under a Contract;

## Status of the Controller

2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:

- (a) “Controller” in respect of the other Party who is “Processor”;
- (b) “Processor” in respect of the other Party who is “Controller”;
- (c) “Joint Controller” with the other Party;
- (d) “Independent Controller” of the Personal Data where the other Party is also “Controller”,

in respect of certain Personal Data under a Contract and shall specify in Annex 1 (*Processing Personal Data*) which scenario they think shall apply in each situation.

## Where one Party is Controller and the other Party its Processor

3. Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller.
4. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
5. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
  - (a) a systematic description of the envisaged Processing and the purpose of the Processing;
  - (b) an assessment of the necessity and proportionality of the Processing in relation to the Deliverables;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and

- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

6. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:

- (a) Process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 14.3 of the Core Terms, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Personal Data Breach;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :
  - (i) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*));
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this Joint Schedule 11, Clauses 14 (*Data protection*), 15 (*What you must keep confidential*) and 16 (*When you can share information*) of the Core Terms;
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) not transfer Personal Data outside of the UK or EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Controller;

- (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
    - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
  - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
7. Subject to paragraph 8 of this Joint Schedule 11, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Personal Data Breach.
8. The Processor's obligation to notify under paragraph 7 of this Joint Schedule 11 shall include the provision of further information to the Controller, as details become available.
9. Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 7 of this Joint Schedule 11 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

- (d) assistance as requested by the Controller following any Personal Data Breach; and/or
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
10. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Joint Schedule 11. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the Processing is not occasional;
  - (b) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - (c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
11. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
12. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
13. Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must:
- (a) notify the Controller in writing of the intended Subprocessor and Processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Subprocessor which give effect to the terms set out in this Joint Schedule 11 such that they apply to the Subprocessor; and
  - (d) provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
14. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
15. The Relevant Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Joint Schedule 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
16. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Relevant Authority may on not less than thirty (30) Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **Where the Parties are Joint Controllers of Personal Data**

17. In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with UK GDPR Article 26 based on the terms set out in Annex 2 to this Joint Schedule 11.

## **Independent Controllers of Personal Data**

18. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
19. Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
20. Where a Party has provided Personal Data to the other Party in accordance with paragraph 18 of this Joint Schedule 11 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
21. The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
22. The Parties shall only provide Personal Data to each other:
  - (a) to the extent necessary to perform their respective obligations under the Contract;
  - (b) in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and
  - (c) where it has recorded it in Annex 1 (*Processing Personal Data*).
23. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
24. A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.



25. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract (**“Request Recipient”**):
- (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - (b) where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
    - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
    - (ii) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
26. Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:
- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
  - (b) implement any measures necessary to restore the security of any compromised Personal Data;
  - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
27. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 (*Processing Personal Data*).
28. Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Annex 1 (*Processing Personal Data*).
29. Notwithstanding the general application of paragraphs 2 to 16 of this Joint Schedule 11 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an

Independent Controller of Personal Data in accordance with paragraphs 18 to 28 of this Joint Schedule 11.

## Annex 1 - Processing Personal Data

This Annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with the Relevant Authority at its absolute discretion.

- 1.1 The contact details of the Relevant Authority's Data Protection Officer are: **Chris Gooday**
- 1.2 The contact details of the Supplier's Data Protection Officer are: [REDACTED]
- 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Relevant Authority is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with paragraph 3 to paragraph 16 and for the purposes of the Data Protection Legislation, the Relevant Authority is the Controller and the Supplier is the Processor of the following Personal Data:</p> <p>to support, develop and maintain NHSBSA systems and services that process personal data</p>
Duration of the Processing	<p>Personal Data will be held for no more than the term of the Agreement – 5<sup>th</sup> June 2023 until 4<sup>th</sup> June 2024 (and include any extension periods)</p> <p>Each SOW will set out the timeline for the delivery of the services and will define the period of processing or it will be for the duration of the SOW.</p>
Nature and purposes of the Processing	<p>Processing of personal information to enable:</p> <ul style="list-style-type: none"><li>• Promotion of Buyer's goods and services,</li><li>• maintain Buyer's accounts and records and</li><li>• support and manage Buyer's staff.</li><li>• Processing of information provided to Supplier by the controller to perform the Supplier's obligations to the Buyer.</li></ul> <p>Specifically, in this contract that relates to:</p> <ul style="list-style-type: none"><li>• Areas and details as agreed in SOWs.</li><li>• Support, develop and maintain NHSBSA systems and services that process personal data</li></ul> <p>1 User Researcher - Understanding customer requirements Processor staff will only access the personal data as follows: remotely using a secure VPN connection for the following 2 use cases when consent is given by the Controller's customer research participant, and authorisation is permitted by the Controller's project researcher:</p> <ul style="list-style-type: none"><li>• Via the Controller's Microsoft Teams meeting where they connect</li></ul>

	<p>to the invite link using the email address provided by the processor rather than the Exporter, that is not using an NHSmail or @nhsbsa.nhs.uk email address.</p> <ul style="list-style-type: none"> <li>• Via logging into the Controllers Microsoft Sharepoint to only view videos recordings.</li> </ul> <ol style="list-style-type: none"> <li>2 Dev Ops (Platform Engineering) will need temporary access to production live data in environments that do not comply with Cloud Standards V1.5 or higher when implementing authorised changes</li> <li>3 Automation Testers may need access to production data when smoke testing is necessary to ensure the new release is fit for purpose</li> <li>4 Developers may need temporary access to personal data when implementing urgent data fixes to production systems</li> </ol> <p>Any other use cases to access personal data will require formal documented approval by the Controller</p>
Type of Personal Data	<p>Processing of information relevant to the above reasons/purposes. This may include:</p> <ul style="list-style-type: none"> <li>• personal details.</li> <li>• family, lifestyle and social circumstances.</li> <li>• financial details.</li> <li>• employment and education details.</li> <li>• goods or services provided.</li> <li>• visual images, personal appearance and behaviour.</li> <li>• physical or mental health details.</li> <li>• case file information.</li> </ul> <p>Processing of sensitive classes of information that may include:</p> <ul style="list-style-type: none"> <li>• physical or mental health details.</li> <li>• racial or ethnic origin.</li> <li>• religious or other beliefs of a similar nature. trade union membership.</li> </ul> <p>Specific information may also include:- name, address, date of birth, NI number, telephone number, pay, images, biometric data, special category data of patients.</p> <p>Any additional personal data must be added to the relevant Statement of Works</p>
Categories of Data Subject	<p>Processing of personal information about the Buyer's:</p> <ul style="list-style-type: none"> <li>• Staff (including employees, volunteers, agents, and temporary workers),</li> <li>• customers and clients.</li> <li>• suppliers and services providers.</li> <li>• advisers, consultants and other professional experts.</li> <li>• Patients</li> <li>• Members of the public</li> <li>• NHSBSA Website Visitors</li> <li>• complainants and enquirers.</li> <li>• individuals captured by CCTV images</li> </ul>

	<ul style="list-style-type: none"> <li>• details held in the patients record.</li> </ul>
<p>Plan for return and destruction of the data once the Processing is complete UNLESS requirement under Union or Member State law to preserve that type of data</p>	<p>Personal data will only be accessed and used for as long as is necessary for the purpose access and use is granted by the Controller.</p> <p>Access will be revoked and any information held transferred back to the Controller or securely deleted in accordance with the Controller's instructions at the time the processing is authorised.</p> <p>Personal Data will be held for no more than the term of the Agreement. Each SOW will set out the timeline for the delivery of the services and will define the period of processing or it will be for the duration of the SOW.</p>

## **Annex 2 - Joint Controller Agreement – Not Used**

### **1. Joint Controller Status and Allocation of Responsibilities**

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of paragraphs 3-16 of Joint Schedule 11 (Where one Party is Controller and the other Party is Processor) and paragraphs 18-28 of Joint Schedule 11 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the [Supplier/Relevant Authority]:

- i. is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
- ii. shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
- iii. is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
- iv. is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Deliverables where consent is the relevant legal basis for that Processing; and
- v. shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Supplier's/Relevant Authority's] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

1.3 Notwithstanding the terms of clause 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

### **2. Undertakings of both Parties**

2.1 The Supplier and the Relevant Authority each undertake that they shall:

- (a) report to the other Party every [x] months on:

- (i) the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
- (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
- (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
- (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,

that it has received in relation to the subject matter of the Contract during that period;

- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1(a)(i) to (v);
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- (d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Deliverables and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
- (e) request from the Data Subject only the minimum information necessary to provide the Deliverables and treat such extracted information as Confidential Information;
- (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
- (g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:

- (i) are aware of and comply with their duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information;
  - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so; and
  - (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- (h) ensure that it has in place Protective Measures as appropriate to protect against a Personal Data Breach having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Personal Data Breach;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that it holds; and
- (j) ensure that it notifies the other Party as soon as it becomes aware of a Personal Data Breach.

2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

### 3. **Data Protection Breach**

- 3.1 Without prejudice to clause 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:
- (a) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation; and



- (b) all reasonable assistance, including:
  - (i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
  - (ii) co-operation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;
  - (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
  - (iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 3.2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

- (a) the nature of the Personal Data Breach;
- (b) the nature of Personal Data affected;
- (c) the categories and number of Data Subjects concerned;
- (d) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
- (e) measures taken or proposed to be taken to address the Personal Data Breach; and
- (f) describe the likely consequences of the Personal Data Breach.

#### 4. **Audit**

4.1 The Supplier shall permit:

- (a) the Relevant Authority, or a third-party auditor acting under the Relevant Authority's direction, to conduct, at the Relevant Authority's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data

security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or

- (b) the Relevant Authority, or a third-party auditor acting under the Relevant Authority's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Deliverables.

4.2 The Relevant Authority may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Clause 4.1 in lieu of conducting such an audit, assessment or inspection.

## 5. **Impact Assessments**

5.1 The Parties shall:

- (a) provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and
- (b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the Contract, in accordance with the terms of Article 30 UK GDPR.

## 6. **ICO Guidance**

The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Relevant Authority may on not less than thirty (30) Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

## 7. **Liabilities for Data Protection Breach**

**[Guidance:** This clause represents a risk share, you may wish to reconsider the apportionment of liability and whether recoverability of losses are likely to be hindered by the contractual limitation of liability provisions]

7.1 If financial penalties are imposed by the Information Commissioner on either the Relevant Authority or the Supplier for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:

- (a) if in the view of the Information Commissioner, the Relevant Authority is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Relevant Authority, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Relevant

Authority, then the Relevant Authority shall be responsible for the payment of such Financial Penalties. In this case, the Relevant Authority will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Supplier shall provide to the Relevant Authority and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;

- (b) if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Relevant Authority is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Relevant Authority and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or
- (c) if no view as to responsibility is expressed by the Information Commissioner, then the Relevant Authority and the Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 34 of the Core Terms (Resolving disputes).

7.2 If either the Relevant Authority or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("Court") by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.

7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "Claim Losses"):

- (a) if the Relevant Authority is responsible for the relevant Personal Data Breach, then the Relevant Authority shall be responsible for the Claim Losses;
- (b) if the Supplier is responsible for the relevant Personal Data Breach, then the Supplier shall be responsible for the Claim Losses: and
- (c) if responsibility for the relevant Personal Data Breach is unclear, then the Relevant Authority and the Supplier shall be responsible for the Claim Losses equally.

7.4 Nothing in either clause 7.2 or clause 7.3 shall preclude the Relevant Authority and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial

responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Relevant Authority.

## **8. Termination**

If the Supplier is in material Default under any of its obligations under this Annex 2 (*Joint Controller Agreement*), the Relevant Authority shall be entitled to terminate the Contract by issuing a Termination Notice to the Supplier in accordance with Clause 10 of the Core Terms (*Ending the contract*).

## **9. Sub-Processing**

9.1 In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:

- (a) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
- (b) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

## **10. Data Retention**

The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the a Party for statutory compliance purposes or as otherwise required by the Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

# Joint Schedule 13 (Cyber Essentials Scheme)

## 1. Definitions

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

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

## 2. What Certification do you need

2.1 Where the Framework Award Form and/or Order Form requires that the Supplier provide a Cyber Essentials Plus Certificate prior to Framework Start Date and/or commencing the provision of Deliverables under the Call-Off Contract including, if applicable, any Statement of Work, the Supplier shall provide a valid Cyber Essentials Plus Certificate to CCS and/or the Buyer. Where the Supplier fails to comply with this Paragraph it shall be prohibited from commencing the provision of Deliverables under the Call-Off Contract until such time as the Supplier has evidenced to CCS and/or the Buyer its compliance with this Paragraph 2.1.

2.2 Where the Supplier continues to process data during the Call-Off Contract Period the Supplier shall deliver to CCS and/or the Buyer evidence of renewal of the Cyber Essentials Plus

Certificate on each anniversary of the first applicable certificate obtained by the Supplier under Paragraph 2.1.

2.3 In the event that the Supplier fails to comply with Paragraph 2.1 or 2.2, CCS and/or the Buyer reserves the right to terminate the Call-Off Contract for material Default.

2.4 The Supplier shall ensure that all Sub-Contracts with Subcontractors who Process Cyber Essentials Data contain provisions no less onerous on the Subcontractors than those imposed on the Supplier under the Call-Off Contract in respect of the Cyber Essentials Plus Scheme under Paragraph 2.1 of this Schedule.

2.5 This Schedule shall survive termination or expiry of this Contract and each and any Call-Off Contract.

## Call-Off Schedule 1 (Transparency Reports)

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

## Annex A: List of Transparency Reports

Title	Content	Format	Frequency
Performance metrics	Achievement of Fixed Price or Capped Time & Materials SOW within initial agreed time/cost. (or time/cost agreed by both Parties where scope has changed and recorded with a CCN)	To be agreed [ ]	To be agreed [ ]
Performance Metrics	Accurate billing of Supplier as detailed in the contract	Excel by date	Quarterly
Performance metrics	Completion of Sprint Points agreed / recorded at start of each Sprint (Where not applicable/achievable and agreed by the Buyer, an alternative criteria can be used)	To be agreed	To be agreed
Performance Management	Spend to date by SOW	Excel	Quarterly



## Call-Off Schedule 2 (Staff Transfer)

### Definitions

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

<p><b>"Employee Liability"</b></p>	<p><b>1</b> 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 including in relation to the following:</p> <ul style="list-style-type: none"> <li><b>a)</b> redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li> <li><b>b)</b> unfair, wrongful or constructive dismissal compensation;</li> <li><b>c)</b> 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;</li> <li><b>d)</b> compensation for less favourable treatment of part-time workers or fixed term employees;</li> <li><b>e)</b> outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Buyer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Subcontractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions;</li> <li><b>f)</b> claims whether in tort, contract or statute or otherwise;</li> </ul> <p>any investigation 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;</p>
<p><b>"Former Supplier"</b></p>	<p>a supplier supplying the Deliverables to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Deliverables (or any part of the Deliverables) and shall include any Subcontractor of</p>

	such supplier (or any Subcontractor of any such Subcontractor);
<b>"Partial Termination"</b>	the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 10.4 (When CCS or the Buyer can end this contract ) or 10.6 (When the Supplier can end the contract);
<b>"Relevant Transfer"</b>	a transfer of employment to which the Employment Regulations applies;
<b>"Relevant Transfer Date"</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part D: Pensions, shall include the Commencement Date, where appropriate;
<b>"Supplier's Final Supplier Personnel List"</b>	a list provided by the Supplier of all Supplier Personnel whose will transfer under the Employment Regulations on the Service Transfer Date;
<b>"Supplier's Provisional Supplier Personnel List"</b>	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or 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 Supplier;

<p><b>"Staffing Information"</b></p>	<p>in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Buyer may reasonably request (subject to all applicable provisions of the Data Protection Laws), but including in an anonymised format:</p> <ul style="list-style-type: none"> <li>(a) their ages, dates of commencement of employment or engagement, gender and place of work;</li> <li>(b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;</li> <li>(c) the identity of the employer or relevant contracting Party;</li> <li>(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;</li> <li>(e) their wages, salaries, bonuses and profit sharing arrangements as applicable;</li> <li>(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;</li> <li>(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);</li> <li>(h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;</li> <li>(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</li> <li>(j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;</li> </ul>
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<b>"Term"</b>	the period commencing on the Start Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of the relevant Contract;
<b>"Transferring Buyer Employees"</b>	those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date;
<b>"Transferring Former Supplier Employees"</b>	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date.

## 2. INTERPRETATION

Where a provision in this Schedule imposes any obligation on the Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to CCS, the Buyer, Former Supplier, Replacement Supplier or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

## 3. Which parts of this Schedule apply

Only the:

- 3.1 parts of this Schedule identified in the Order Form shall apply to this Call-Off Contract; or
- 3.2 following parts of this Schedule shall apply to this Call-Off Contract:

**[Delete if not applicable to the Call-Off Contract]**

- o Part C (No Staff Transfer On Start Date)
- o Part E (Staff Transfer on Exit)

**1. PART A: STAFF TRANSFER AT THE START DATE**

**2. OUTSOURCING FROM THE BUYER**

**1. What is a relevant transfer**

**1.1 The Buyer and the Supplier agree that:**

- 1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Buyer Employees; and
- 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Buyer and the Transferring Buyer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Subcontractor and each such Transferring Buyer Employee.
- 1.1.3 The Buyer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.

**2. Indemnities the Buyer must give**

- 2.1 Subject to Paragraph 2.2, the Buyer shall indemnify the Supplier and any Sub-Contractor against any Employee Liabilities arising from or as a result of any act or omission by the indemnifying party in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee occurring before the Relevant Transfer Date.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date.
- 2.3 Subject to Paragraphs 2.4 and 2.5, if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then -
  - 2.3.1 the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;
  - 2.3.2 the Buyer may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;

- 2.3.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
- 2.3.4 if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in this Paragraph 2.3.

2.4 The indemnity in Paragraph 2.3 shall not apply to any claim:

- 2.4.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or any Subcontractor; or
- 2.4.2 any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure.

2.5 The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date.

2.6 If the Supplier and/or any Subcontractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.

### **3. Indemnities the Supplier must give and its obligations**

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Subcontractor in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee whether occurring before, on or after the Relevant Transfer Date.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees, from (and including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national

insurance contributions and pension contributions and any other sums due under Part D: Pensions.

#### **4. Information the Supplier must provide**

The Supplier shall promptly provide to the Buyer in writing such information as is necessary to enable the Buyer to carry out its duties under regulation 13 of the Employment Regulations. The Buyer shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### **5. Cabinet Office requirements**

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

#### **6. Pensions**

- 6.1 The Supplier shall comply with:
  - 6.1.1 all statutory pension obligations in respect of all Transferring Buyer Employees; and
  - 6.1.2 the provisions in Part D: Pensions.

**3. PART B: STAFF TRANSFER AT THE START DATE**

**4. TRANSFER FROM A FORMER SUPPLIER ON RE-PROCUREMENT**

**1. What is a relevant transfer**

**1.1 The Buyer and the Supplier agree that:**

1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Subcontractor and each such Transferring Former Supplier Employee.

1.2 The Buyer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.

**2. Indemnities given by the Former Supplier**

2.1 Subject to Paragraph 2.2, the Buyer shall procure that each Former Supplier shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date.

2.3 Subject to Paragraphs 2.4 and 2.5, if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Subcontractor pursuant to the Employment Regulations then:

2.3.1 the Supplier will within 5 Working Days of becoming aware of that fact notify the Buyer and the relevant Former Supplier in writing;

2.3.2 the Former Supplier may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;



- 2.3.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
- 2.3.4 if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

1. and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Buyer shall procure that the Former Supplier will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Former Supplier's employees referred to in paragraph 2.3.

2.4 The indemnity in Paragraph 2.3 shall not apply to any claim:

- 2.4.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Supplier and/or any Subcontractor; or
- 2.4.2 that the termination of employment was unfair because the Supplier and/or Subcontractor neglected to follow a fair dismissal procedure.

2.5 The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date.

2.6 If the Supplier and/or any Subcontractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.

### **3. Indemnities the Supplier must give and its obligations**

3.1 Subject to Paragraph 3.1, the Supplier shall indemnify the Buyer, and the Former Supplier against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Subcontractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements,

PAYE, national insurance contributions and pension contributions and all such sums due under Part D: Pensions.

#### **4. Information the Supplier must give**

The Supplier shall promptly provide to the Buyer and/or at the Buyer's direction, the Former Supplier, in writing such information as is necessary to enable the Buyer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Former Supplier shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### **5. Cabinet Office requirements**

- 5.1 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in
  - (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

#### **6. Limits on the Former Supplier's obligations**

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

#### **7. Pensions**

- 7.1 The Supplier shall comply with:
  - 7.1.1 all statutory pension obligations in respect of all Transferring Former Supplier Employees; and
  - 7.1.2 the provisions in Part D: Pensions.

**PART C: No STAFF TRANSFER ON THE START DATE**

**1. What happens if there is a staff transfer**

- 1.1 The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.
- 1.2 Subject to Paragraphs 1.3, 1.4 and 1.5, if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:

- 1.2.1 the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;
- 1.2.2 the Buyer may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within  
10 Working Days of receipt of notice from the Supplier;
- 1.2.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
- 1.2.4 if after the period referred to in paragraph 1.2.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

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

- (a) the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 1.2; and
- (b) the Buyer will procure that the Former Supplier indemnifies the Supplier and/or any Subcontractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2.

- 1.3 The indemnities in Paragraph 1.2 shall not apply to any claim:

- 1.3.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or Subcontractor; or
- 1.3.2 any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure

- 1.4 The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date.
- 1.5 If the Supplier and/or the Subcontractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Subcontractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.

## **2. Limits on the Former Supplier's obligations**

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

5. **PART D: PENSIONS**

1. **Definitions**

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

<b>"Actuary"</b>	a Fellow of the Institute and Faculty of Actuaries;
<b>"Admission Agreement"</b>	means either or both of the CSPA Admission Agreement (as defined in Annex D1: CSPA) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;
<b>"Broadly Comparable"</b>	<p>(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and</p> <p>(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and <b>"Broad Comparability"</b> shall be construed accordingly;</p>
<b>"CSPA"</b>	the schemes as defined in Annex D1 to this Part D;

<b>"Fair Deal Employees"</b>	<p>those:</p> <ul style="list-style-type: none"> <li>(a) Transferring Buyer Employees; and/or</li> <li>(b) Transferring Former Supplier Employees; and/or</li> <li>(c) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Subcontractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.3.4 of Parts A or B or Paragraph 1.2.4 of Part C;</li> <li>(d) where the Former Supplier becomes the Supplier those employees;</li> </ul> <p>who at the Commencement Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Buyer;</p>
<b>"Fair Deal Schemes"</b>	means the relevant Statutory Scheme or a Broadly Comparable pension scheme;
<b>"Fund Actuary"</b>	means Fund Actuary as defined in Annex D3 to this Part D;
<b>"LGPS"</b>	the schemes as defined in Annex D3 to this Part D;
<b>"NHSPS"</b>	the schemes as defined in Annex D2 to this Part D;
<b>"New Fair Deal"</b>	<p>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 including:</p> <ul style="list-style-type: none"> <li>(a) any amendments to that document immediately prior to the Relevant Transfer Date; and</li> <li>(b) any similar pension protection in accordance with the subsequent Annex D1-D3 inclusive as notified to the Supplier by the CCS or Buyer; and</li> </ul>
<b>"Statutory Schemes"</b>	means the CSPA, NHSPS or LGPS.

## 2. Supplier obligations to participate in the pension schemes

- 2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPA, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.

- 2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Supplier undertakes:
- 2.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
  - 2.3.2 to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

### **3. Supplier obligation to provide information**

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

### **4. Indemnities the Supplier must give**

- 4.1 The Supplier undertakes to the Buyer to indemnify and keep indemnified CCS, NHS Pensions the Buyer and/or any Replacement Supplier and/or any Replacement Subcontractor on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter and/or the LGPS Admission Agreement or relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.
- 4.2 The Supplier hereby indemnifies the CCS, NHS Pensions, the Buyer and/or any Replacement Supplier and/or Replacement Subcontractor from and against all Losses suffered or incurred by it or them which arise from claims by Fair Deal Employees of the Supplier and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
- 4.2.1 relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or

- 4.2.2 arise out of the failure of the Supplier and/or any relevant Subcontractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract.

4.3 The indemnities in this Part D and its Annexes:

- 4.3.1 shall survive termination of this Contract; and
- 4.3.2 shall not be affected by the caps on liability contained in Clause 11 (How much you can be held responsible for).

**5. What happens if there is a dispute**

5.1 The Dispute Resolution Procedure will not apply to this Part D and any dispute between the CCS and/or the Buyer and/or the Supplier or between their respective actuaries or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the CCS and/or the Buyer and/or the Supplier be referred to an independent Actuary:

- 5.1.1 who will act as an expert and not as an arbitrator;
- 5.1.2 whose decision will be final and binding on the CCS and/or the Buyer and/or the Supplier; and
- 5.1.3 whose expenses shall be borne equally by the CCS and/or the Buyer and/or the Supplier unless the independent Actuary shall otherwise direct.

**6. Other people's rights**

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

**7. What happens if there is a breach of this Part D**

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



## 8. Transferring New Fair Deal Employees

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

## 9. What happens to pensions if this Contract ends

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

## 10. Broadly Comparable Pension Schemes

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

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

- 10.2 Where the Supplier has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of Paragraph 10.1, the Supplier shall (and shall procure that any of its Subcontractors shall):
- 10.2.1 supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid

certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than 28 days before the Relevant Transfer Date;

- 10.2.2 fully fund any such Broadly Comparable pension scheme in accordance with the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department for the period ending on the Service Transfer Date;
- 10.2.3 instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or CCS and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
- 10.2.4 provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is terminated;
- 10.2.5 allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service ("**Shortfall**"), the Supplier or the Subcontractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Supplier and any Subcontractor, the Shortfall shall be paid by the Supplier; and
- 10.2.6 indemnify CCS and/or the Buyer and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or on demand for any failure to pay the Shortfall as required under Paragraph 10.2.5 above.

## Annex D1:

### Civil Service Pensions Schemes (CSPS)

#### 1. Definitions

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

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

#### 2. Access to equivalent pension schemes after transfer

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

## Annex D2: NHS Pension Schemes

### 1. Definitions

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

<b>"Direction Letter"</b>	NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Subcontractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Subcontractor in the NHSPS in respect of the NHSPS Eligible Employees;
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<p><b>SPS Eligible Employees"</b></p>	<p>h of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:</p> <ul style="list-style-type: none"> <li>(a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or</li> <li>(b) their employment with a Former Supplier who provides access to the NHSPS pursuant to an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),</li> </ul> <p>, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).</p> <p>the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible Employee;</p>
<p><b>"NHS Body"</b></p>	<p>the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;</p>
<p><b>"NHS Pensions"</b></p>	<p>NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be</p>

	responsible for relevant administrative functions of the NHSPS;
<b>"NHSPS"</b>	National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
<b>"NHS Pension Scheme Arrears"</b>	failure on the part of the Supplier or its Subcontractors (if any) to pay employer's contributions or deduct and pay across employee's contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees;
<b>"NHS Pension Scheme Regulations"</b>	appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
<b>"NHS Premature Retirement Rights"</b>	its to which any Fair Deal Employee (had they remained in the employment of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
<b>"Pension Benefits"</b>	benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme; and
<b>"Retirement Benefits Scheme"</b>	pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

## 2. Membership of the NHS Pension Scheme

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any NHSPS Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHSPS, must by or as soon as reasonably

practicable after the Relevant Transfer Date, each secure a Direction Letter to enable the NHSPS Eligible Employees to retain either continuous active membership of or eligibility for, the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract, and have a right to membership or eligibility of that scheme under the terms of the Direction Letter.

- 2.2 The Supplier must supply to the Buyer by or as soon as reasonably practicable after the Relevant Transfer Date a complete copy of each Direction Letter.
- 2.3 The Supplier must ensure (and procure that each of its Subcontractors (if any) ensures) that all of its NHSPS Eligible Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter.
- 2.4 The Supplier will (and will procure that its Subcontractors (if any) will) comply with the terms of the Direction Letter, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health in respect of the NHSPS Eligible Employees for so long as it remains bound by the terms of any such Direction Letter.
- 2.5 Where any employee omitted from the Direction Letter supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Eligible Employee, the Supplier will (and will procure that its Subcontractors (if any) will) treat that person as if they had been an NHSPS Eligible Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.6 The Supplier will (and will procure that its Subcontractors (if any) will) as soon as reasonably practicable and at its (or its Subcontractor's) cost, obtain any guarantee, bond or indemnity that may from time to time be required by the Secretary of State for Health.

### **3. Access to NHS Pension Schemes after transfer**

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

### **4. Continuation of early retirement rights after transfer**

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

### **5. What the buyer do if the Supplier breaches its pension obligations**

- 5.1 The Supplier agrees that the Buyer is entitled to make arrangements with NHS

Pensions for the Buyer to be notified if the Supplier (or its Subcontractor) breaches the terms of its Direction Letter. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Buyer in the event that it (or its Subcontractor) breaches the terms of its Direction Letter.

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

## **6. Compensation when pension scheme access can't be provided**

- 6.1 If the Supplier (or its Subcontractor, if relevant) is unable to provide the NHSPS Eligible Employees with either:
- 6.1.1 membership of the NHSPS (having used its best endeavours to secure a Direction Letter); or
  - 6.1.2 access to a Broadly Comparable pension scheme,
- the Buyer may in its sole discretion permit the Supplier (or any of its Subcontractors) to compensate the NHSPS Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Subcontractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Eligible Employees. The Supplier must meet (or must procure that the relevant Subcontractor meets) the costs of the Buyer determining whether the level of compensation offered is reasonable in the circumstances.
- 6.2 This flexibility for the Buyer to allow compensation in place of Pension Benefits is in addition to and not instead of the Buyer's right to terminate the Contract.

## **7. Indemnities that a Supplier must give**

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



## **8. Subcontractors**

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

## **Annex D3:**

### **Local Government Pension Schemes (LGPS)**

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

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

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

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

### **1. Definitions**

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

<b>"Administering Authority"</b>	relation to <b>the Fund [insert name]</b> , the relevant Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013;
<b>"Fund Actuary"</b>	actuary to a Fund appointed by the Administering Authority of that Fund;
<b>"Fund"</b>	<b>[insert name], a pension fund within the LGPS;</b>
<b>"LGPS"</b>	Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
<b>"LGPS Admission Agreement"</b>	admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013;
<b>"LGPS Admission Body"</b>	admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);

<b>"LGPS Eligible Employees"</b>	Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS; and
<b>"LGPS Regulations"</b>	Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

## **2. Supplier must become a LGPS admission body**

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

## **3. Right of set-off**

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

## **4. Supplier ceases to be an LGPS Admission Body**

If the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date and the Supplier either cannot or does not participate in the LGPS, the Supplier shall offer

such LGPS Eligible Employee membership of a pension scheme Broadly Comparable to the LGPS.

## **5. Discretionary benefits**

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

## **Annex D4: Other Schemes**

**[Guidance:** Placeholder for Pension Schemes other than LGPS, CSPA & NHSPA]

## **Part E: Staff Transfer on Exit**

### **1. Obligations before a Staff Transfer**

- 1.1 The Supplier agrees that within 20 Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Buyer 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 the relevant Contract;
  - 1.1.3 the date which is 12 Months before the end of the Term; and
  - 1.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any 6 Month period),

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

- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Subcontractor (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Subcontractor.
- 1.4 The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Subcontractor that all information provided pursuant to paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall, unless otherwise instructed by the Buyer (acting reasonably):

not replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces

not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and

death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Personnel (including any payments connected with the termination of employment);

- 1.5.1 not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.2 not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 1.5.3 not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
- 1.5.4 not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process;
- 1.5.5 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor;
- 1.5.6 give the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor reasonable access to Supplier Personnel and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Subcontractor in respect of persons expected to be Transferring Supplier Employees;
- 1.5.7 co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 1.5.8 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Subcontractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect;
- 1.5.9 not for a period of 12 Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Subcontractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer (acting reasonably));

- 1.5.10 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date; fully fund any Broadly Comparable pension schemes set up by the Supplier;
  - 1.5.11 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Fair Deal Employees);
  - 1.5.12 promptly provide to the Buyer such documents and information mentioned in Paragraph 3.1.1 of Part D: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
  - 1.5.13 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract.
- 1.6 On or around each anniversary of the Effective Date and up to four times during the last 12 Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:
  - 1.6.1 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;
  - 1.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and
  - 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
  - 1.7.1 the most recent month's copy pay slip data;



- 1.7.2 details of cumulative pay for tax and pension purposes; details of cumulative tax paid;
- 1.7.3 tax code;
- 1.7.4 details of any voluntary deductions from pay; and
- 1.7.5 bank/building society account details for payroll purposes.

## **2. Staff Transfer when the contract ends**

- 2.1 A change in the identity of the supplier of the Services (or part of the Services), howsoever arising, may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier agree that where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Subcontractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes (as defined in Part D: Pensions).
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of any act or omission of the Supplier or any Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.
- 2.4 The indemnity in paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date.
- 2.5 Subject to Paragraphs 2.6 and 2.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations then.
  - 2.5.1 the Replacement Supplier and/or Replacement Subcontractor will, within 5 Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;
  - 2.5.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Subcontractor; if such offer of

employment is accepted, the Replacement Supplier and/or Replacement Subcontractor shall immediately release the person from its employment;

2.5.3 if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, the Replacement Supplier and/or Replacement Subcontractor may within 5 Working Days give notice to terminate the employment of such person;

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

2.6 The indemnity in Paragraph 2.5 shall not apply to:

2.6.1 (a) any claim for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Subcontractor, or

2.6.2 (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Subcontractor neglected to follow a fair dismissal procedure.

2.7 The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date.

2.8 If at any point the Replacement Supplier and/or Replacement Subcontractor accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.

2.9 The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Subcontractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Subcontractor, shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

2.10 Subject to Paragraph 2.9, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee or any

appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.

- 2.11 The indemnity in Paragraph 2.10 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Personnel List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 above).

# Call-Off Schedule 3 (Continuous Improvement)

## 1. Buyer's Rights

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

## 2. Supplier's Obligations

- 2.1 The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
- 2.2 The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Buyer of the Deliverables and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.
- 2.3 In addition to Paragraph 2.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Buyer's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
  - 2.3.1 identifying the emergence of relevant new and evolving technologies;
  - 2.3.2 changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
  - 2.3.3 new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
  - 2.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.

- 2.4 The initial Continuous Improvement Plan for the first (1<sup>st</sup>) Contract Year shall be submitted by the Supplier to the Buyer for Approval within one hundred (100) Working Days of the first Order or six (6) Months following the Start Date, whichever is earlier.
- 2.5 The Buyer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.
- 2.6 The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 2.7 If the Buyer wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Buyer or CCS.
- 2.8 Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 2.5:
- 2.8.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
  - 2.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 2.9 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1<sup>st</sup>) Contract Year) in accordance with the procedure and timescales set out in Paragraph 2.3.
- 2.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 2.11 Should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.
- 2.12 At any time during the Contract Period of the Call-Off Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.

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

**Technical Response**

**User Centred Design**

**Procurement Ref: 23\_01\_03**

**Response Return Date: 4th April 4pm**

**Clarification question deadline: 28th March 4pm**

**Guidance: -**

Tenderers must use the tables below to present their proposal response to questions.





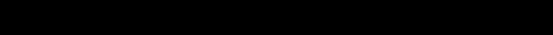

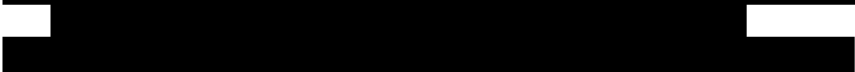
Tenderers should note that their response to this section will be evaluated against the guidance provided and in accordance with the Evaluation Criteria.

The size of the text box is not an indication of the expected size of the response. Text boxes may be enlarged as required but responses must be kept as succinct as possible and within any word count stated.

Where a word limit is given in relation to any question, the Authority will not evaluate any part of the response which exceeds that word limit. Unless otherwise indicated by the Authority, for the purposes of the word limit, any words in tables will be counted, however words in diagrams will not (i.e. a diagram being a simplified drawing showing the appearance structure or working of something or a schematic representation). Any additional information provided which is not requested by the Authority may not be evaluated.

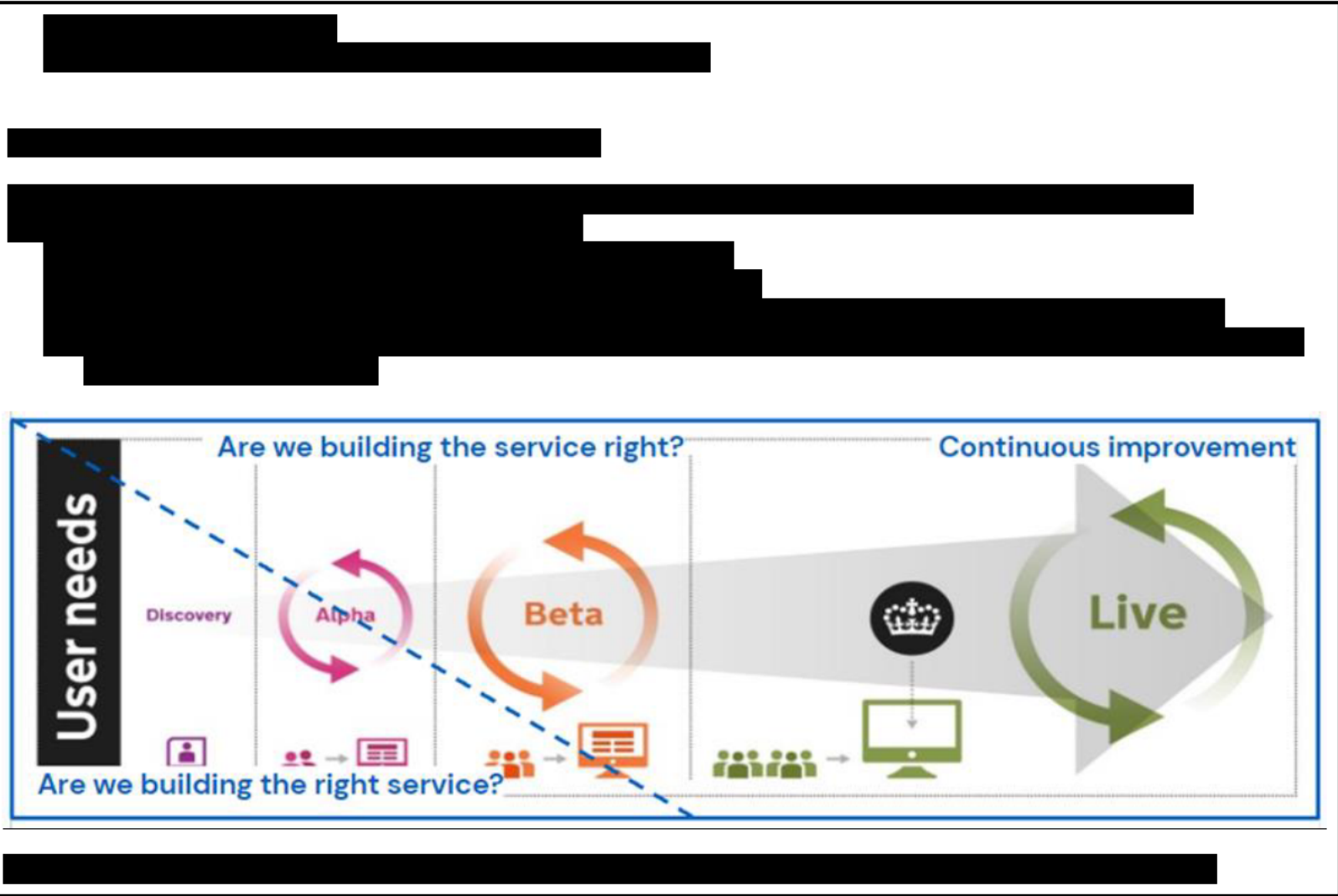
Please do not provide any general marketing material and use 1 line spacing and 11 font size.

### Written Proposal Criteria

Date	4 <sup>th</sup> April 2023
Name of requirements	NHS Business Services Authority – User Centred Design
Supplier name	Hippo Digital Ltd
Proposal	
Section 1: Technical Competence – 40% Weighting	
	
 	  



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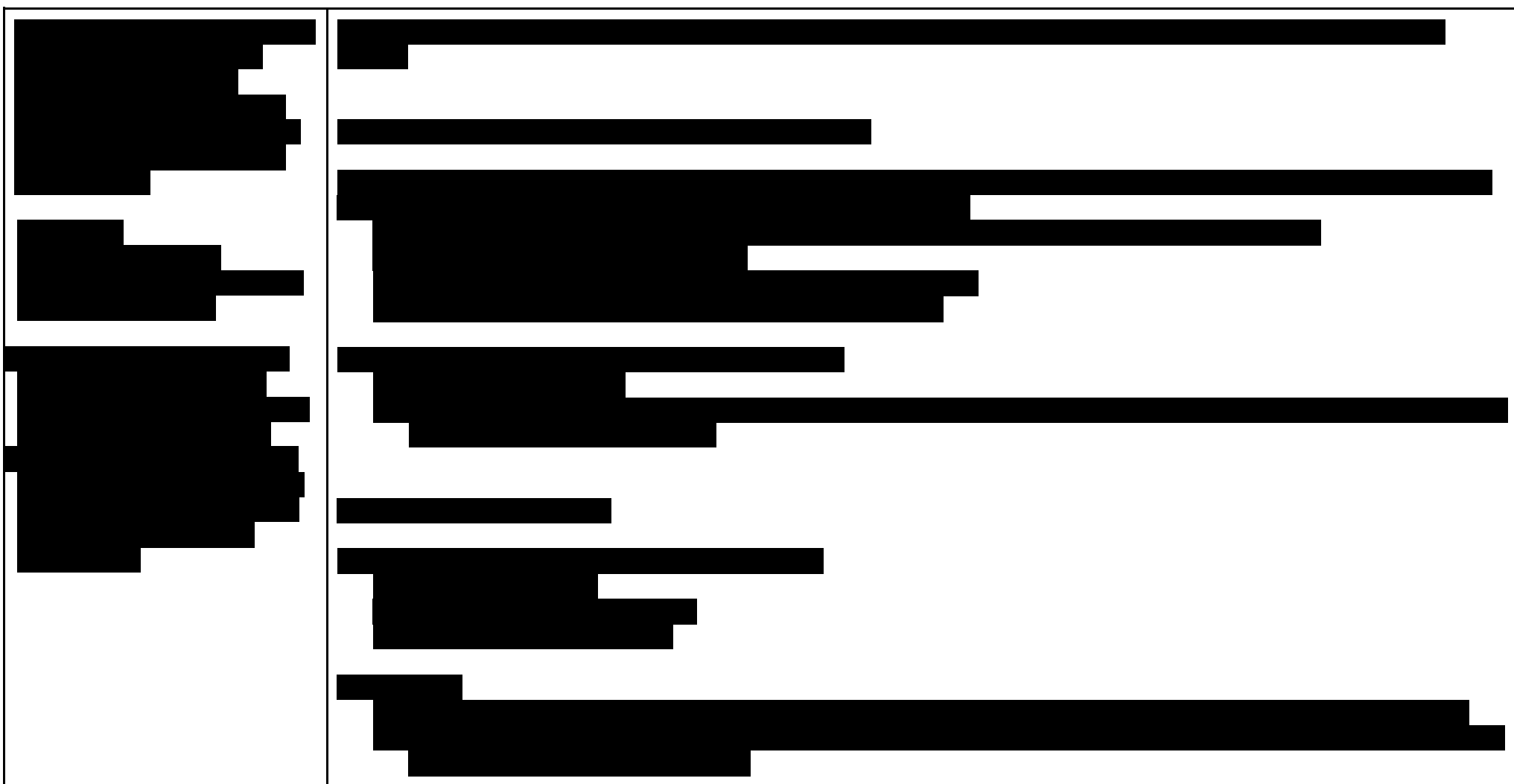
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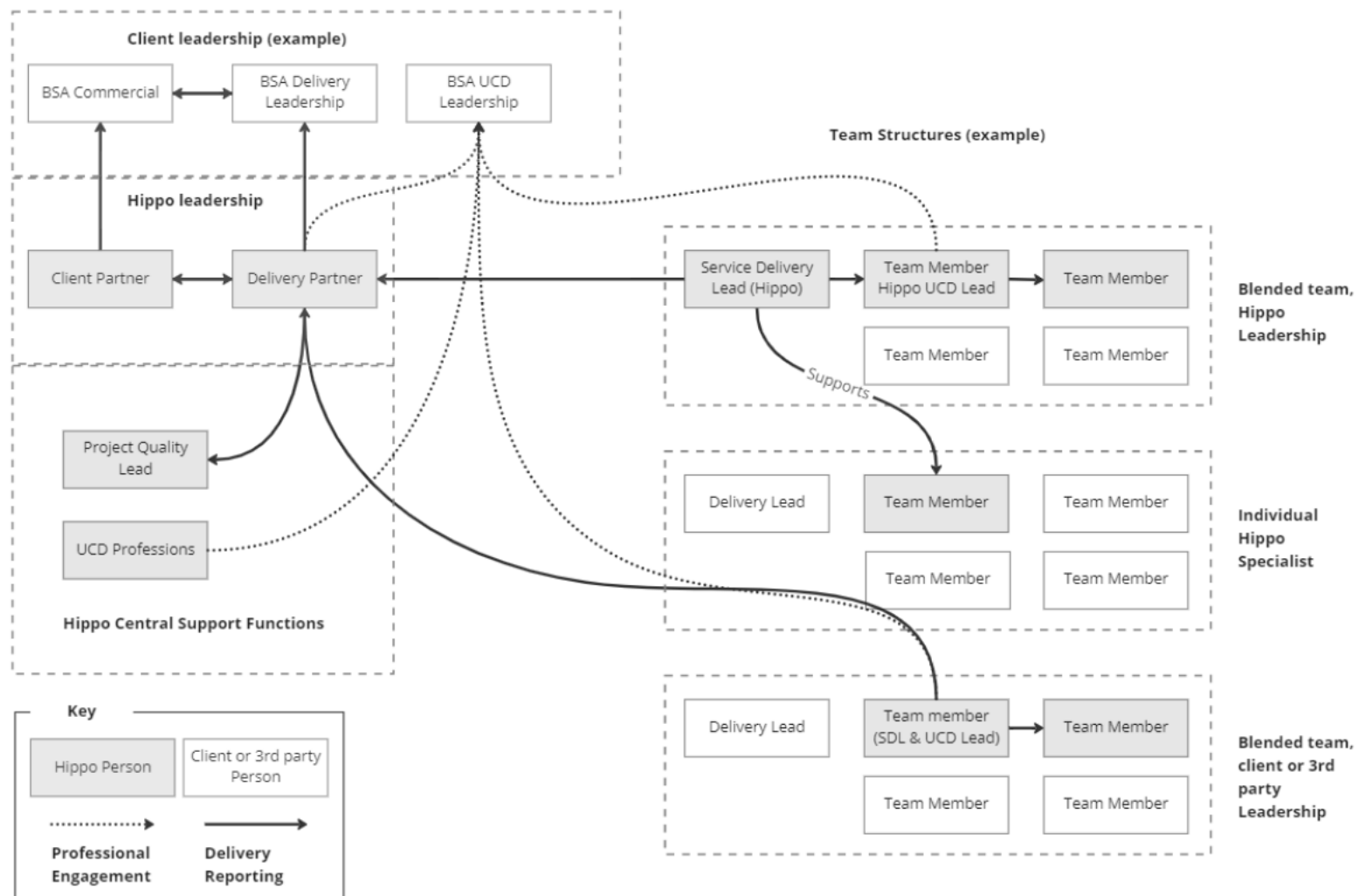


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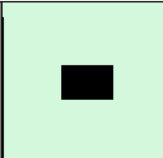
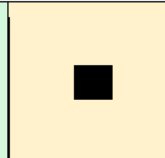
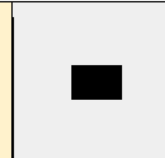
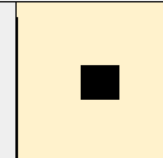
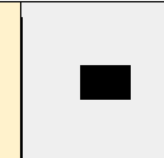
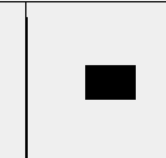
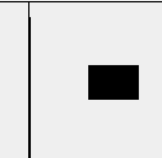
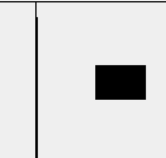
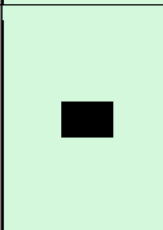
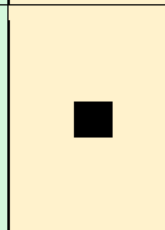

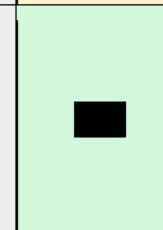
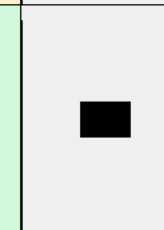
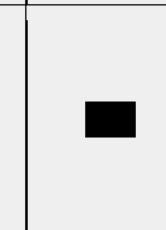
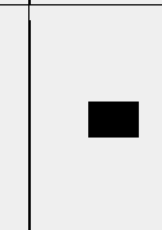
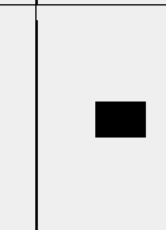

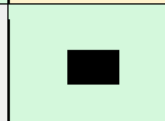
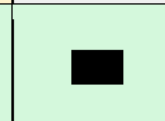


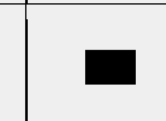
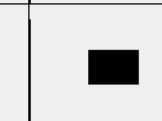
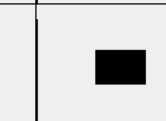


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Hard-to-reach groups	Staff & Suppliers			Patients									
	Frontline staff (primary care)	Frontline staff (secondary care)	Suppliers (teams integrating with services)	Lower digital confidence or skill	Access needs	English as a second language	Ethnic minorities	Older people	Students	Carers	No fixed abode or nomads	Non-UK citizens	A

NHS GP Registration	NHS login	■			■			■			■		
	NHS GP Registration	■			■			■			■		
	NHS Reverification	■			■			■			■		
	NHS Blood and transplant	■	■	■	■	■	■	■	■	■	■	■	■
	NHS COVID risk assessment tool	■	■	■	■	■	■	■	■	■	■	■	■
	NHS COVID Vaccinations	■						■					
	NHS MESH	■			■			■			■		



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NHS E COVID risk assessment tool								
NHS MESH								

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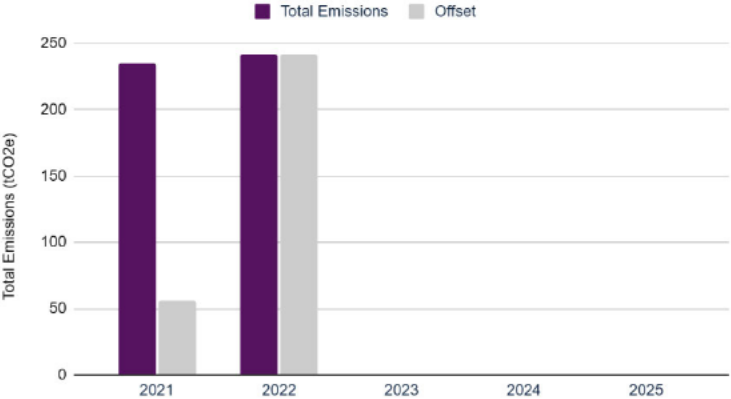


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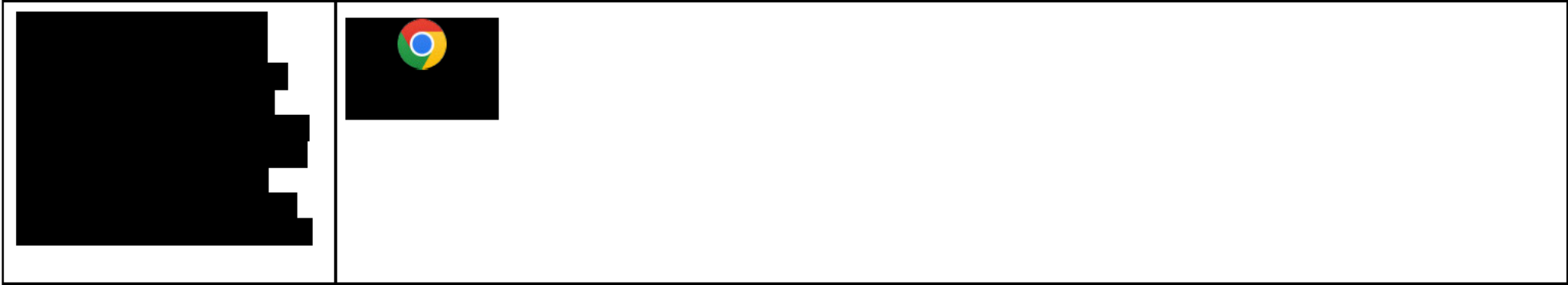
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



























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

## 1. Call-Off Contract Charges

DDaT Cluster	Role #	Role Family	DDaT Role	SFIA Role Level	Quantity or number of Specialists required	Q1 National Maximum Day Rate (£)	Q2 National Home Day Rate (£)
						50%	50%
Product Delivery	77	Delivery	Delivery Manager	5	1		
User Centred Design	134	ContentDesigner	lead Content Designer	6	1		
User Centred Design	135	ContentDesigner	Senior Content Designer	5	3		
User Centred Design	136	ContentDesigner	Content Designer	4	6		
User Centred Design	137	ContentDesigner	Junior Content Designer	3	1		
User Centred Design	142	GraphicInteractionDesigner	Lead Graphic/Interaction Designer	6	1		
User Centred Design	143	GraphicInteractionDesigner	Senior Graphic/Interaction Designer	5	3		

User Centred Design	144	GraphicInteractionDesigner	Graphic/Interaction Designer	4	6		
User Centred Design	145	GraphicInteractionDesigner	Junior Graphic/Interaction Designer	3	1		
User Centred Design	149	ServiceDesigner	Lead Service Designer	6	1		
User Centred Design	150	ServiceDesigner	Senior Service Designer	5	3		
User Centred Design	151	ServiceDesigner	Service Designer	4	6		
User Centred Design	152	ServiceDesigner	Junior Service Designer	3	1		
User Centred Design	154	TechnicalWriter	Content Strategist	6	2		
User Centred Design	155	TechnicalWriter	Lead Technical Writer	6	2		
User Centred Design	156	TechnicalWriter	Technical Writer	5	2		
User Centred Design	159	UserResearcher	Lead User Researcher	6	1		
User Centred Design	160	UserResearcher	Senior User Researcher	5	3		
User Centred Design	161	UserResearcher	User Researcher	4	6		
User Centred Design	162	UserResearcher	Junior User Researcher	3	1		

## 1.1 The Supplier shall ensure:

- 1.1.1 as part of the Further Competition Procedure, its pricing for the Deliverables are in accordance with the Buyer's Statement of Requirements which shall be no greater than those based on the Framework Prices set out in Framework Schedule 3 (Framework Prices).
- 1.1.2 that all applicable Charges shall be calculated in accordance with the Pricing Mechanism detailed in the Order Form (and, if applicable, each SOW) using the following:
  - (a) the agreed Day Rates or other rates specified in this Schedule for Supplier Staff providing the Deliverables (which are exclusive of any applicable expenses and VAT);
  - (b) the number of Work Days, or pro rata portion of a Work Day, that Supplier Staff work solely to provide the Deliverables and meet the tasks sets out in the Order Form and, if applicable, each SOW (between the applicable SOW Start Date and SOW End Date).

1.2 Further to Paragraph 1.2 of Framework Schedule 3 (Framework Pricing), the Supplier will provide a detailed breakdown of its Charges for the Deliverables in sufficient detail to enable the Buyer to verify the accuracy of any invoice submitted.

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

- a role description of each member of the Supplier Staff;
- a facilities description (if applicable);

- the agreed Day Rate for each Supplier Staff;
- any expenses charged for in relation to each Work Day for each Supplier Staff, which must be in accordance with the Buyer's Expenses Policy (if applicable);
- the number of Work Days, or pro rata for every part day, they will be actively be engaged in providing the Deliverables between the SOW Start Date and SOW End Date; and
- the total SOW cost for all Supplier Staff role and facilities in providing the Deliverables.

1.3 If a Capped Time and Materials or Fixed Price has been agreed for a particular SOW:

- the Supplier shall continue to work on the Deliverables until they are satisfactorily complete and accepted by the Buyer at its own cost and expense where the Capped or Fixed Price is exceeded; and
- the Buyer will have no obligation or liability to pay any additional Charges or cost of any part of the Deliverables yet to be completed and/or Delivered after the Capped or Fixed Price is exceeded by the Supplier.

1.4 All risks or contingencies will be included in the Charges. The Parties agree that the following assumptions, representations, risks and contingencies will apply in relation to the Charges:

Q1 - DAY RATES - NATIONAL shall be inclusive of travel and subsistence.

## **Annex 1 (Expenses Policy)**

Supplier own policy used. Day rates inclusive of travel and subsistence

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

**1. Definitions**

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

<b>"Buyer Property"</b>	<b>the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Contract;</b>
<b>"Buyer Software"</b>	<b>any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;</b>
<b>"Buyer System"</b>	<b>the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables;</b>
<b>"Commercial off the shelf Software" or "COTS Software"</b>	<b>Non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms</b>
<b>"Defect"</b>	<b>any of the following:</b>  <b>a) any error, damage or defect in the manufacturing of a Deliverable; or</b>  <b>b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</b>
	<b>c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract; or</b>

	d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;
"Emergency Maintenance"	ad hoc and unplanned maintenance provided by the Supplier where either Party reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault;
"ICT Environment"	the Buyer System and the Supplier System;
"Licensed Software"	all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Buyer for the purposes of or pursuant to this Call Off Contract, including any COTS Software;
"Maintenance Schedule"	has the meaning given to it in paragraph 8 of this Schedule;
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"New Release"	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;



<b>"Open Source Software"</b>	<b>computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;</b>
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<b>"Operating Environment"</b>	<p>means the Buyer System and any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which:</p> <ul style="list-style-type: none"> <li>a) the Deliverables are (or are to be) provided; or</li> <li>b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; or</li> <li>c) where any part of the Supplier System is situated;</li> </ul>
<b>"Permitted Maintenance"</b>	has the meaning given to it in paragraph 8.2 of this Schedule;
<b>"Quality Plans"</b>	has the meaning given to it in paragraph 6.1 of this Schedule;
<b>"Sites"</b>	has the meaning given to it in Joint Schedule 1(Definitions), and for the purposes of this Call Off Schedule shall also include any premises from, to or at which physical interface with the Buyer System takes place;
<b>"Software"</b>	Specially Written Software COTS Software and non-COTS Supplier and third party Software;
<b>"Software Supporting Materials"</b>	has the meaning given to it in paragraph 9.1 of this Schedule;
<b>"Source Code"</b>	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
<b>"Specially Written Software"</b>	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;

<b>"Supplier System"</b>	<b>the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and</b>
	<b>management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);</b>

## **2. When this Schedule should be used**

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

## **3. Buyer due diligence requirements**

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

#### **4. Licensed software warranty**

4.1. The Supplier represents and warrants that:

4.1.1. it has and shall continue to have all necessary rights in and to the Licensed Software made available by the Supplier (and/or any Sub-Contractor) to the

Buyer which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Deliverables by the Buyer;

4.1.2. all components of the Specially Written Software shall:

4.1.2.1. be free from material design and programming errors;

4.1.2.2. perform in all material respects in accordance with the relevant specifications contained in Call Off Schedule 14 (Service Levels and Balanced Scorecard) and Documentation; and

4.1.2.3. not infringe any IPR.

#### **5. Provision of ICT Services**

5.1. The Supplier shall:

5.1.1. ensure that the release of any new COTS Software in which the Supplier owns the IPR, or upgrade to any Software in which the Supplier owns the IPR complies with the interface requirements of the Buyer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Buyer three (3) Months before the release of any new COTS Software or Upgrade;

5.1.2. ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;

5.1.3. ensure that the Supplier System will be free of all encumbrances;

5.1.4. ensure that the Deliverables are fully compatible with any Buyer Software, Buyer System, or otherwise used by the Supplier in connection with this Contract;

5.1.5. minimise any disruption to the Services and the ICT Environment and/or the Buyer's operations when providing the Deliverables;

#### **6. Standards and Quality Requirements**

6.1. The Supplier shall develop, in the timescales specified in the Order Form, quality plans that ensure that all aspects of the Deliverables are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").

6.2. The Supplier shall seek Approval from the Buyer (not be unreasonably withheld or

delayed) of the Quality Plans before implementing them. Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Deliverables are provided to the standard required by this Contract.

- 6.3. Following the approval of the Quality Plans, the Supplier shall provide all Deliverables in accordance with the Quality Plans.
- 6.4. The Supplier shall ensure that the Supplier Personnel shall at all times during the Call Off Contract Period:
  - 6.4.1. be appropriately experienced, qualified and trained to supply the Deliverables in accordance with this Contract;
  - 6.4.2. apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Deliverables; and
  - 6.4.3. obey all lawful instructions and reasonable directions of the Buyer (including, if so required by the Buyer, the ICT Policy) and provide the Deliverables to the reasonable satisfaction of the Buyer.

## 7. ICT Audit

- 7.1. The Supplier shall allow any auditor access to the Supplier premises to:
  - 7.1.1. inspect the ICT Environment and the wider service delivery environment (or any part of them);
  - 7.1.2. review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
  - 7.1.3. review the Supplier's quality management systems including all relevant Quality Plans.

## 8. Maintenance of the ICT Environment

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

disruption to the ICT Environment and the provision of the Deliverables.

## **9. Intellectual Property Rights**

### **9.1. Assignments granted by the Supplier: Specially Written Software**

- 9.1.1. The Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Buyer with full guarantee (or shall procure assignment to the Buyer), title to and all rights and interest in the Specially Written Software together with and including:

- 9.1.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software; and
  - 9.1.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "**Software Supporting Materials**").
- 9.1.2. The Supplier shall:
- 9.1.2.1. inform the Buyer of all Specially Written Software or New IPRs that are a modification, customisation, configuration or enhancement to any COTS Software;
  - 9.1.2.2. deliver to the Buyer the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer and the Buyer shall become the owner of such media upon receipt; and
  - 9.1.2.3. without prejudice to paragraph 9.1.2.2, provide full details to the Buyer of any of the Supplier's Existing IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially Written Software or New IPR and the Supplier hereby grants to the Buyer and shall procure that any relevant third party licensor shall grant to the Buyer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit such Supplier's Existing IPRs and Third Party IPRs to the extent that it is necessary to enable the Buyer to obtain the full benefits of ownership of the Specially Written Software and New IPRs.
- 9.1.3. The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and New IPRs are properly transferred to the Buyer.

## **9.2. Licences for non-COTS IPR from the Supplier and third parties to the Buyer**

- 9.2.1. Unless the Buyer gives its Approval the Supplier must not use any:

- a) of its own Existing IPR that is not COTS Software;
- b) third party software that is not COTS Software

- 9.2.2. Where the Buyer Approves the use of the Supplier's Existing IPR that is not COTS Software the Supplier shall grant to the Buyer a perpetual,

royalty-free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function including the right to

load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Call-Off Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.

9.2.3. Where the Buyer Approves the use of third party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph 9.2.2. If the Supplier cannot obtain such a licence for the Buyer it shall:

9.2.3.1. notify the Buyer in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Supplier could seek to use; and

9.2.3.2. only use such third party IPR as referred to at Paragraph 9.2.3.1 if the Buyer Approves the terms of the licence from the relevant third party.

9.2.4. Where the Supplier is unable to provide a license to the Supplier's Existing IPR in accordance with Paragraph 9.2.2 above, it must meet the requirement by making use of COTS Software or Specially Written Software.

9.2.5. The Supplier may terminate a licence granted under Paragraph 9.2.1 by giving at least thirty (30) days' notice in writing if there is an Authority Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.

### **9.3. Licenses for COTS Software by the Supplier and third parties to the Buyer**

9.3.1. The Supplier shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the Buyer on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.2. Where the Supplier owns the COTS Software it shall make available the COTS software to a Replacement Supplier at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.3. Where a third party is the owner of COTS Software licensed in accordance with this Paragraph 9.3 the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licensee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.4. The Supplier shall notify the Buyer within seven (7) days of becoming aware of any COTS Software which in the next thirty-six (36) Months:

9.3.4.1. will no longer be maintained or supported by the developer; or will no longer be made commercially available

### **9.4. Buyer's right to assign/novate licences**



- 9.4.1. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph 9.2 (to:
  - 9.4.1.1. a Central Government Body; or
  - 9.4.1.2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.
- 9.4.2. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in Paragraph 9.2.

## **9.5. Licence granted by the Buyer**

9.5.1. The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Buyer Software and the Specially Written Software solely to the extent necessary for providing the Deliverables in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 15 (Confidentiality).

## **9.6. Open Source Publication**

- 9.6.1. Unless the Buyer otherwise agrees in advance in writing (and subject to Paragraph 9.6.3) all Specially Written Software and computer program elements of New IPR shall be created in a format, or able to be converted (in which case the Supplier shall also provide the converted format to the Buyer) into a format, which is:
  - 9.6.1.1. suitable for publication by the Buyer as Open Source; and
  - 9.6.1.2. based on Open Standards (where applicable),  
and the Buyer may, at its sole discretion, publish the same as Open Source.
- 9.6.2. The Supplier hereby warrants that the Specially Written Software and the New IPR:
  - 9.6.2.1. are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Buyer will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software, New IPRs or the Buyer System;
  - 9.6.2.2. have been developed using reasonable endeavours to ensure that their publication by the Buyer shall not cause any harm or damage to any party using them; do not contain any material which would bring the Buyer into disrepute;
  - 9.6.2.3. can be published as Open Source without breaching the rights of any third party;
  - 9.6.2.4. will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the date notified by the Buyer to the Supplier; and

9.6.2.5. do not contain any Malicious Software.

9.6.3. Where the Buyer has Approved a request by the Supplier for any part of the Specially Written Software or New IPRs to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Existing IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:

9.6.3.1. as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open Source publication; and

9.6.3.2. include in the written details and information about the impact that inclusion of such IPRs or Deliverables based on such IPRs, will have on any other Specially Written Software and/or New IPRs and the Buyer's ability to publish such other items or Deliverables as Open Source.

## **9.7. Malicious Software**

9.7.1. The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.

9.7.2. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.

9.7.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph 9.7.2 shall be borne by the Parties as follows:

9.7.3.1. by the Supplier, where the Malicious Software originates from the Supplier Software, the third party Software supplied by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and by the Buyer, if the Malicious Software originates from the Buyer Software or the Buyer Data (whilst the Buyer Data was under the control of the Buyer).

## **10. IPR asset management**

10.1 The Parties shall work together to ensure that there is appropriate IPR asset management under each Call-Off Contract, and:

10.1.1 where the Supplier is working on the Buyer's System, the Supplier shall comply with the Buyer's IPR asset management approach and procedures.

10.1.2 where the Supplier is working on the Supplier's System, the Buyer will ensure that it maintains its IPR asset management procedures in accordance with Good Industry Practice.

Records and materials associated with IPR asset management shall form part of

the Deliverables, including those relating to any Specially Written Software or New IPR.

- 10.2 The Supplier shall comply with any instructions given by the Buyer as to where it shall store all work in progress Deliverables and finished Deliverables (including all Documentation and Source Code) during the term of the Call-Off Contract and at the stated intervals or frequency specified by the Buyer and upon termination of the Contract or any Statement of Work.
- 10.3 The Supplier shall ensure that all items it uploads into any repository contain sufficient detail, code annotations and instructions so that a third-party developer (with the relevant technical abilities within the applicable role) would be able to understand how the item was created and how it works together with other items in the repository within a reasonable timeframe.
- 10.4 The Supplier shall maintain a register of all Open Source Software it has used in the provision of the Deliverables as part of its IPR asset management obligations under this Contract.

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

## 1. Definitions

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

<b>"Buyer Property"</b>	the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Contract;
<b>"Buyer Software"</b>	any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;
<b>"Buyer System"</b>	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables;
<b>"Commercial off the shelf Software" or "COTS Software"</b>	Non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms
<b>"Defect"</b>	any of the following: a) any error, damage or defect in the manufacturing of a Deliverable; or b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract; or d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or

	the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;
"Emergency Maintenance"	ad hoc and unplanned maintenance provided by the Supplier where either Party reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault;
"ICT Environment"	the Buyer System and the Supplier System;
"Licensed Software"	all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Buyer for the purposes of or pursuant to this Call Off Contract, including any COTS Software;
"Maintenance Schedule"	has the meaning given to it in paragraph 8 of this Schedule;
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"New Release"	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
"Open Source Software"	computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;
"Operating Environment"	means the Buyer System and any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: a) the Deliverables are (or are to be) provided; or b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; or c) where any part of the Supplier System is situated;
"Permitted Maintenance"	has the meaning given to it in paragraph 8.2 of this Schedule;
"Quality Plans"	has the meaning given to it in paragraph 6.1 of

	this Schedule;
"Sites"	has the meaning given to it in Joint Schedule 1(Definitions), and for the purposes of this Call Off Schedule shall also include any premises from, to or at which physical interface with the Buyer System takes place;
"Software"	Specially Written Software COTS Software and non-COTS Supplier and third party Software;
"Software Supporting Materials"	has the meaning given to it in paragraph 9.1 of this Schedule;
"Source Code"	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Specially Written Software"	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;
"Supplier System"	the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);

## 2. When this Schedule should be used

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

## 3. Buyer due diligence requirements

3.1. The Supplier shall satisfy itself of all relevant details, including but not limited to, details relating to the following;

- 3.1.1. suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Start Date) future Operating Environment;
- 3.1.2. operating processes and procedures and the working methods of the Buyer;
- 3.1.3. ownership, functionality, capacity, condition and suitability for use in the provision of the Deliverables of the Buyer Assets; and

3.1.4. existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Deliverables.

3.2. The Supplier confirms that it has advised the Buyer in writing of:

3.2.1. each aspect, if any, of the Operating Environment that is not suitable for the provision of the ICT Services;

3.2.2. the actions needed to remedy each such unsuitable aspect; and

3.2.3. a timetable for and the costs of those actions.

3.3 The Supplier undertakes:

3.3.1 and represents to the Buyer that Deliverables will meet the Buyer's acceptance criteria as set out in the Call-Off Contract and, if applicable, each Statement of Work; and

3.3.2 to maintain all interface and interoperability between third party software or services, and Specially Written Software required for the performance or supply of the Deliverables.

#### **4. Licensed software warranty**

4.1. The Supplier represents and warrants that:

4.1.1. it has and shall continue to have all necessary rights in and to the Licensed Software made available by the Supplier (and/or any Sub-Contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Deliverables by the Buyer;

4.1.2. all components of the Specially Written Software shall:

4.1.2.1. be free from material design and programming errors;

4.1.2.2. perform in all material respects in accordance with the relevant specifications contained in Call Off Schedule 14 (Service Levels and Balanced Scorecard) and Documentation; and

4.1.2.3. not infringe any IPR.

#### **5. Provision of ICT Services**

5.1. The Supplier shall:

5.1.1. ensure that the release of any new COTS Software in which the Supplier owns the IPR, or upgrade to any Software in which the Supplier owns the IPR complies with the interface requirements of the Buyer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Buyer three (3) Months before the release of any new COTS Software or Upgrade;

5.1.2. ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;

5.1.3. ensure that the Supplier System will be free of all encumbrances;

- 5.1.4. ensure that the Deliverables are fully compatible with any Buyer Software, Buyer System, or otherwise used by the Supplier in connection with this Contract;
- 5.1.5. minimise any disruption to the Services and the ICT Environment and/or the Buyer's operations when providing the Deliverables;

## 6. Standards and Quality Requirements

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

## 7. ICT Audit

- 7.1. The Supplier shall allow any auditor access to the Supplier premises to:
  - 7.1.1. inspect the ICT Environment and the wider service delivery environment (or any part of them);
  - 7.1.2. review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
  - 7.1.3. review the Supplier's quality management systems including all relevant Quality Plans.

## 8. Maintenance of the ICT Environment

- 8.1. If specified by the Buyer in the Order Form, the Supplier shall create and maintain a rolling schedule of planned maintenance to the ICT Environment ("**Maintenance Schedule**") and make it available to the Buyer for Approval in accordance with the timetable and instructions specified by the Buyer.



8.2. Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.

8.3. The Supplier shall give as much notice as is reasonably practicable to the Buyer prior to carrying out any Emergency Maintenance.

8.4. The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Deliverables.

## 9. Intellectual Property Rights

### 9.1. Assignments granted by the Supplier: Specially Written Software

9.1.1. The Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Buyer with full guarantee (or shall procure assignment to the Buyer), title to and all rights and interest in the Specially Written Software together with and including:

9.1.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software; and

9.1.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "**Software Supporting Materials**").

### 9.1.2. The Supplier shall:

9.1.2.1. inform the Buyer of all Specially Written Software or New IPRs that are a modification, customisation, configuration or enhancement to any COTS Software;

9.1.2.2. deliver to the Buyer the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer and the Buyer shall become the owner of such media upon receipt; and

9.1.2.3. without prejudice to paragraph 9.1.2.2, provide full details to the Buyer of any of the Supplier's Existing IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially Written Software or New IPR and the Supplier hereby grants to the Buyer and shall procure that any relevant third party licensor shall grant to the Buyer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit such Supplier's Existing IPRs and Third

Party IPRs to the extent that it is necessary to enable the Buyer to obtain the full benefits of ownership of the Specially Written Software and New IPRs.

9.1.3. The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and New IPRs are properly transferred to the Buyer.

## **9.2. Licences for non-COTS IPR from the Supplier and third parties to the Buyer**

9.2.1. Unless the Buyer gives its Approval the Supplier must not use any:

- a) of its own Existing IPR that is not COTS Software;
- b) third party software that is not COTS Software

9.2.2. Where the Buyer Approves the use of the Supplier's Existing IPR that is not COTS Software the Supplier shall grant to the Buyer a perpetual, royalty-free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Call-Off Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.

9.2.3. Where the Buyer Approves the use of third party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph 9.2.2. If the Supplier cannot obtain such a licence for the Buyer it shall:

9.2.3.1. notify the Buyer in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Supplier could seek to use; and

9.2.3.2. only use such third party IPR as referred to at Paragraph 9.2.3.1 if the Buyer Approves the terms of the licence from the relevant third party.

9.2.4. Where the Supplier is unable to provide a license to the Supplier's Existing IPR in accordance with Paragraph 9.2.2 above, it must meet the requirement by making use of COTS Software or Specially Written Software.

9.2.5. The Supplier may terminate a licence granted under Paragraph 9.2.1 by giving at least thirty (30) days' notice in writing if there is an Authority Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.

## **9.3. Licenses for COTS Software by the Supplier and third parties to the Buyer**

9.3.1. The Supplier shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the Buyer on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.2. Where the Supplier owns the COTS Software it shall make available the COTS software to a Replacement Supplier at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.3. Where a third party is the owner of COTS Software licensed in accordance with this Paragraph 9.3 the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licensee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.4. The Supplier shall notify the Buyer within seven (7) days of becoming aware of any COTS Software which in the next thirty-six (36) Months:

9.3.4.1. will no longer be maintained or supported by the developer; or

9.3.4.2. will no longer be made commercially available

#### **9.4. Buyer's right to assign/novate licences**

9.4.1. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph 9.2 (to:

9.4.1.1. a Central Government Body; or

9.4.1.2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.

9.4.2. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in Paragraph 9.2.

#### **9.5. Licence granted by the Buyer**

9.5.1. The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Buyer Software and the Specially Written Software solely to the extent necessary for providing the Deliverables in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 15 (Confidentiality).

#### **9.6. Open Source Publication**

9.6.1. Unless the Buyer otherwise agrees in advance in writing (and subject to Paragraph 9.6.3) all Specially Written Software and computer program elements of New IPR shall be created in a format, or able to be converted (in which case the Supplier shall also provide the converted format to the Buyer) into a format, which is:

- 9.6.1.1. suitable for publication by the Buyer as Open Source; and
- 9.6.1.2. based on Open Standards (where applicable),  
and the Buyer may, at its sole discretion, publish the same as Open Source.

9.6.2. The Supplier hereby warrants that the Specially Written Software and the New IPR:

- 9.6.2.1. are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Buyer will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software, New IPRs or the Buyer System;
- 9.6.2.2. have been developed using reasonable endeavours to ensure that their publication by the Buyer shall not cause any harm or damage to any party using them;
- 9.6.2.3. do not contain any material which would bring the Buyer into disrepute;
- 9.6.2.4. can be published as Open Source without breaching the rights of any third party;
- 9.6.2.5. will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the date notified by the Buyer to the Supplier; and
- 9.6.2.6. do not contain any Malicious Software.

9.6.3. Where the Buyer has Approved a request by the Supplier for any part of the Specially Written Software or New IPRs to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Existing IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:

- 9.6.3.1. as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open Source publication; and
- 9.6.3.2. include in the written details and information about the impact that inclusion of such IPRs or Deliverables based on such IPRs, will have on any other Specially Written Software and/or New IPRs and the Buyer's ability to publish such other items or Deliverables as Open Source.

## 9.7. Malicious Software

9.7.1. The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.

9.7.2. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.

9.7.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph 9.7.2 shall be borne by the Parties as follows:

9.7.3.1. by the Supplier, where the Malicious Software originates from the Supplier Software, the third party Software supplied by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and

9.7.3.2. by the Buyer, if the Malicious Software originates from the Buyer Software or the Buyer Data (whilst the Buyer Data was under the control of the Buyer).

## **10. IPR asset management**

10.1 The Parties shall work together to ensure that there is appropriate IPR asset management under each Call-Off Contract, and:

10.1.1 where the Supplier is working on the Buyer's System, the Supplier shall comply with the Buyer's IPR asset management approach and procedures.

10.1.2 where the Supplier is working on the Supplier's System, the Buyer will ensure that it maintains its IPR asset management procedures in accordance with Good Industry Practice.

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

10.2 The Supplier shall comply with any instructions given by the Buyer as to where it shall store all work in progress Deliverables and finished Deliverables (including all Documentation and Source Code) during the term of the Call-Off Contract and at the stated intervals or frequency specified by the Buyer and upon termination of the Contract or any Statement of Work.

10.3 The Supplier shall ensure that all items it uploads into any repository contain sufficient detail, code annotations and instructions so that a third-party developer (with the relevant technical abilities within the applicable role) would be able to understand how the item was created and how it works together with other items in the repository within a reasonable timeframe.

10.4 The Supplier shall maintain a register of all Open Source Software it has used in the provision of the Deliverables as part of its IPR asset management obligations under this Contract.

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

1.1 The Order Form lists the key roles ("**Key Roles**") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date and, if applicable, the Statement of Work will list the Key Roles and names of persons who the Supplier shall appoint to fill those Key Roles as of the SOW Start Date.

1.2 The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.

1.3 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.

1.4 The Supplier shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:

1.4.1 requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed);

1.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or

1.4.3 the person's employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.

1.5 The Supplier shall:

1.5.1 notify the Buyer promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);

1.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;

1.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff's employment contract, this will mean at least three (3) Months' notice;

1.5.4 ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables;

1.5.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom he or she has replaced;

1.5.6 on written request from the Buyer, provide a copy of the contract of employment or engagement (between the Supplier and Supplier Staff) for every member of the Supplier Staff made available to the Buyer under the Call-Off Contract when providing Deliverables, and under each Statement of Work;

1.5.7 on written request from the Buyer, provide details of start and end dates of engagement of all Key Staff filling Key Roles under the Call-Off Contract and, if applicable, under each Statement of Work[.]; and]

1.5.8 [**Insert** any additional requirements].

1.6 The Buyer may require the Supplier to remove or procure that any

Subcontractor shall remove any Key Staff that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Staff.

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

Call-Off Ref:

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

## 1. Definitions

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

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

## 2. BCDR Plan

2.1 The Buyer and the Supplier recognise that, where specified in Schedule 4 (Framework Management), CCS shall have the right to enforce the Buyer's rights under this Schedule.

2.2 At least ninety (90) Working Days after the Start Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan (a



“**BCDR Plan**”), which shall detail the processes and arrangements that the Supplier shall follow to:

2.2.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and

2.2.2 the recovery of the Deliverables in the event of a Disaster

2.3 The BCDR Plan shall be divided into three sections:

2.3.1 Section 1 which shall set out general principles applicable to the BCDR Plan;

2.3.2 Section 2 which shall relate to business continuity (the "**Business Continuity Plan**"); and

2.3.3 Section 3 which shall relate to disaster recovery (the "**Disaster Recovery Plan**").

2.4 Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

### **3. General Principles of the BCDR Plan (Section 1)**

3.1 Section 1 of the BCDR Plan shall:

3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;

3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Deliverables and any goods and/or services provided to the Buyer by a Related Supplier;

3.1.3 contain an obligation upon the Supplier to liaise with the Buyer and any Related Suppliers with respect to business continuity and disaster recovery;

3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Buyer and any of its other Related Supplier in each case as notified to the Supplier by the Buyer from time to time;

3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;

3.1.6 contain a risk analysis, including:

(a) failure or disruption scenarios and assessments of likely frequency of occurrence;

(b) identification of any single points of failure within the provision of Deliverables and processes for managing those risks;

(c) identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Supplier; and

(d) a business impact analysis of different anticipated failures or disruptions;

3.1.7 provide for documentation of processes, including business processes, and procedures;

3.1.8 set out key contact details for the Supplier (and any Subcontractors) and for the Buyer;

3.1.9 identify the procedures for reverting to "normal service";

3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;

3.1.11 identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the BCDR Plan; and

3.1.12 provide for the provision of technical assistance to key contacts at the Buyer as required by the Buyer to inform decisions in support of the Buyer's business continuity plans.

3.2 The BCDR Plan shall be designed so as to ensure that:

3.2.1 the Deliverables are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;

3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;

3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and

3.2.4 it details a process for the management of disaster recovery testing.

3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Deliverables and the business operations supported by the provision of Deliverables.

3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators (PI's) or Service levels, or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

#### **4. Business Continuity (Section 2)**

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Deliverables remain supported and to ensure continuity of the business operations supported by the Services including:

4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Deliverables; and

4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Deliverables in order to address the effect of the failure or disruption.

4.2 The Business Continuity Plan shall:

- 4.2.1 address the various possible levels of failures of or disruptions to the provision of Deliverables;
- 4.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Deliverables;
- 4.2.3 specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators (PI's) or Service Levels in respect of the provision of other Deliverables during any period of invocation of the Business Continuity Plan; and
- 4.2.4 set out the circumstances in which the Business Continuity Plan is invoked.

## **5. Disaster Recovery (Section 3)**

5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Buyer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

5.2 The Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:

- 5.2.1 loss of access to the Buyer Premises;
- 5.2.2 loss of utilities to the Buyer Premises;
- 5.2.3 loss of the Supplier's helpdesk or CAFM system;
- 5.2.4 loss of a Subcontractor;
- 5.2.5 emergency notification and escalation process;
- 5.2.6 contact lists;
- 5.2.7 staff training and awareness;
- 5.2.8 BCDR Plan testing;
- 5.2.9 post implementation review process;
- 5.2.10 any applicable Performance Indicators (PI's) with respect to the provision of the disaster recovery services and details of any agreed relaxation to the Performance Indicators (PI's) or Service Levels in respect of the provision of other Deliverables during any period of invocation of the Disaster Recovery Plan;
- 5.2.11 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.2.12 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- 5.2.13 testing and management arrangements.

## **6. Review and changing the BCDR Plan**

6.1 The Supplier shall review the BCDR Plan:

6.1.1 on a regular basis and as a minimum once every six (6) Months;

6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and

6.1.3 where the Buyer requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer's prior written approval.

6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within such period as the Buyer shall reasonably require.

6.3 The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Buyer a report (a "**Review Report**") setting out the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.

6.4 Following receipt of the Review Report and the Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree the Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

6.5 The Supplier shall as soon as is reasonably practicable after receiving the approval of the Supplier's Proposals effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Deliverables.

## **7. Testing the BCDR Plan**

7.1 The Supplier shall test the BCDR Plan:

- 7.1.1 regularly and in any event not less than once in every Contract Year;
- 7.1.2 in the event of any major reconfiguration of the Deliverables
- 7.1.3 at any time where the Buyer considers it necessary (acting in its sole discretion).

7.2 If the Buyer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Buyer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Buyer and shall liaise with the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer.

7.4 The Supplier shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.

7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Buyer a report setting out:

- 7.5.1 the outcome of the test;
- 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
- 7.5.3 the Supplier's proposals for remedying any such failures.

7.6 Following each test, the Supplier shall take all measures requested by the Buyer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.

## **8. Invoking the BCDR Plan**

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

## **9. Circumstances beyond your control**

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



# Call-Off Schedule 9 (Security)

## Part A: Short Form Security Requirements

### 1. Definitions

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

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

## **2. Complying with security requirements and updates to them**

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

## **3. Security Standards**

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



Buyer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

## **4. Security Management Plan**

### **4.1 Introduction**

- 4.1.1 The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

### **4.2 Content of the Security Management Plan**

- 4.2.1 The Security Management Plan shall:

- a) comply with the principles of security set out in Paragraph 3 and any other provisions of this Contract relevant to security;
- b) identify the necessary delegated organisational roles for those responsible for ensuring it is complied with by the Supplier;
- c) detail the process for managing any security risks from Subcontractors and third parties authorised by the Buyer with access to the Deliverables, processes associated with the provision of the Deliverables, the Buyer Premises, the Sites and any ICT, Information and data (including the Buyer's Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
- d) be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Buyer Premises, the Sites, and any ICT, Information and data (including the Buyer's Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
- e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Contract;
- f) set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and, where necessary in accordance with paragraph 2.2 the Security Policy; and

- g) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Buyer engaged in the provision of the Deliverables and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

#### **4.3 Development of the Security Management Plan**

- 4.3.1 Within twenty (20) Working Days after the Start Date and in accordance with Paragraph 4.4, the Supplier shall prepare and deliver to the Buyer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- 4.3.2 If the Security Management Plan submitted to the Buyer in accordance with Paragraph 4.3.1, or any subsequent revision to it in accordance with Paragraph 4.4, is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit to the Buyer for Approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of its first submission to the Buyer. If the Buyer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.
- 4.3.3 The Buyer shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to Paragraph 4.3.2. However, a refusal by the Buyer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.
- 4.3.4 Approval by the Buyer of the Security Management Plan pursuant to Paragraph 4.3.2 or of any change to the Security Management Plan in accordance with Paragraph 4.4 shall not relieve the Supplier of its obligations under this Schedule.

#### **4.4 Amendment of the Security Management Plan**

- 4.4.1 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
  - a) emerging changes in Good Industry Practice;
  - b) any change or proposed change to the Deliverables and/or associated processes;

- c) where necessary in accordance with paragraph 2.2, any change to the Security Policy;
  - d) any new perceived or changed security threats; and
  - e) any reasonable change in requirements requested by the Buyer.
- 4.4.2 The Supplier shall provide the Buyer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Buyer. The results of the review shall include, without limitation:
  - a) suggested improvements to the effectiveness of the Security Management Plan;
  - b) updates to the risk assessments; and
  - c) suggested improvements in measuring the effectiveness of controls.
- 4.4.3 Subject to Paragraph 4.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph 4.4.1, a request by the Buyer or otherwise) shall be subject to the Variation Procedure.
- 4.4.4 The Buyer may, acting reasonably, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.

## **5. Security breach**

- 5.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 5.1, the Supplier shall:
  - 5.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Buyer) necessary to:
    - a) minimise the extent of actual or potential harm caused by any Breach of Security;
    - b) remedy such Breach of Security to the extent possible and protect the integrity of the Buyer and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;

- c) prevent an equivalent breach in the future exploiting the same cause failure; and
- d) as soon as reasonably practicable provide to the Buyer, where the Buyer so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Buyer.

5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy (where relevant in accordance with paragraph 2.2) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Buyer.

## 6. Data security

6.1 The Supplier will ensure that any system on which the Supplier holds any Government Data will be accredited as specific to the Buyer and will comply with:

- the government security policy framework and information assurance policy (see: <https://www.ncsc.gov.uk/collection/risk-management-collection> );
- guidance on risk management (see: <https://www.ncsc.gov.uk/collection/risk-management-collection> );
- guidance issued by the Centre for Protection of National Infrastructure on Risk Management and Accreditation of Information Systems (see: <http://osgug.ucaiuq.org/conformity/security/Shared%20Documents/Reference/UK%20-%20CPNI%20-%20Risk%20Management%20and%20Accreditation%20of%20IS.pdf> ); and
- the relevant government information assurance standard(s) (see: <https://knowledgehub.group/documents/49300605/0/bps68723-0000-00-hmg-ia-standard-numbers-1-and-2-information-risk-management.pdf/645c3ec5-e187-8124-16e8-ab9d86540cbb?t=1605540161981> ).

6.2 Where the duration of a Call-Off Contract exceeds one (1) year, the Supplier will review the accreditation status at least once each year to assess whether material changes have occurred which could alter the original accreditation decision in relation to Government Data. If any changes have occurred then

the Supplier agrees to promptly re-submit such system for re-accreditation.

# **Part B: Long Form Security Requirements**

Not Used

## **Part B – Annex 1:**

### **Baseline Security Requirements**

#### **1. Handling Classified information**

- 1.1 The Supplier shall not handle Buyer information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Supplier shall seek additional specific guidance from the Buyer.

#### **2. End user devices**

- 2.1 When Government Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the National Cyber Security Centre ("NCSC") to at least Foundation Grade, for example, under the NCSC Commercial Product Assurance scheme ("CPA").
- 2.2 Devices used to access or manage Government Data and services must be under the management authority of Buyer or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a 'known good' state prior to being provisioned into the management authority of the Buyer. Unless otherwise agreed with the Buyer in writing, all Supplier devices are expected to meet the set of security requirements set out in the End User Devices Security Guidance (<https://www.ncsc.gov.uk/guidance/end-user-device-security>). Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Buyer and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from the NCSC guidance, then this should be agreed in writing on a case by case basis with the Buyer.

#### **3. Data Processing, Storage, Management and Destruction**

3.1The Supplier and Buyer recognise the need for the Buyer's information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Supplier must be able to state to the Buyer the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Government Data will be subject to at all times.

3.2The Supplier shall agree any change in location of data storage, processing and administration with the Buyer in accordance with Clause 14 (Data protection).

3.3The Supplier shall:

- 3.3.1 provide the Buyer with all Government Data on demand in an agreed open format;
- 3.3.2 have documented processes to guarantee availability of Government Data in the event of the Supplier ceasing to trade;
- 3.3.3 securely destroy all media that has held Government Data at the end of life of that media in line with Good Industry Practice; and
- 3.3.4 securely erase any or all Government Data held by the Supplier when requested to do so by the Buyer.

#### **4. Ensuring secure communications**

4.1The Buyer requires that any Government Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by NCSC, to at least Foundation Grade, for example, under CPA.

4.2The Buyer requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

#### **5. Security by design**

5.1The Supplier shall apply the 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Government Data.

5.2When designing and configuring the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a NCSC certification (<https://www.ncsc.gov.uk/section/products-services/ncsc-certification>) for all bespoke or complex components of the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier).

#### **6. Security of Supplier Staff**

- 6.1 Supplier Staff shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work.
- 6.2 The Supplier shall agree on a case by case basis Supplier Staff roles which require specific government clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Government Data.
- 6.3 The Supplier shall prevent Supplier Staff who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Government Data except where agreed with the Buyer in writing.
- 6.4 All Supplier Staff that have the ability to access Government Data or systems holding Government Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Buyer in writing, this training must be undertaken annually.
- 6.5 Where the Supplier or Subcontractors grants increased ICT privileges or access rights to Supplier Staff, those Supplier Staff shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within one (1) Working Day.

## **7. Restricting and monitoring access**

- 7.1 The Supplier shall operate an access control regime to ensure all users and administrators of the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) are uniquely identified and authenticated when accessing or administering the Services. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the ICT Environment that they require. The Supplier shall retain an audit record of accesses.

## **8. Audit**

- 8.1 The Supplier shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include:
  - 8.1.1 Logs to facilitate the identification of the specific asset which makes every outbound request external to the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier). To the extent the design of the Deliverables allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
  - 8.1.2 Security events generated in the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) and shall include: privileged account log-on and log-off events, the start and



termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.

8.2The Supplier and the Buyer shall work together to establish any additional audit and monitoring requirements for the ICT Environment.

8.3The Supplier shall retain audit records collected in compliance with this Paragraph 8 for a period of at least 6 Months.

## **Part B – Annex 2 - Security Management Plan**

Security Management plans to be agreed at implementation stage as required in individual Statements of Work

## Call-Off Schedule 10 (Exit Management)

### 1. Definitions

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

<b>"Exclusive Assets"</b>	Supplier Assets used exclusively by the Supplier in the provision of the Deliverables;
<b>"Exit Information"</b>	has the meaning given to it in Paragraph 3.1 of this Schedule;
<b>"Exit Manager"</b>	the person appointed by each Party to manage their respective obligations under this Schedule;
<b>"Exit Plan"</b>	the plan produced and updated by the Supplier during the Initial Period in accordance with Paragraph 4 of this Schedule;
<b>"Net Book Value"</b>	the current net book value of the relevant Supplier Asset(s) calculated in accordance with the Framework Tender or Call-Off Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
<b>"Non-Exclusive Assets"</b>	those Supplier Assets used by the Supplier in connection with the Deliverables but which are also used by the for other purposes;
<b>"Registers"</b>	the register and configuration database referred to in Paragraph 2.2 of this Schedule;
<b>"Replacement Goods"</b>	any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods

	following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Services"</b>	any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Termination Assistance"</b>	the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice;
<b>"Termination Assistance Notice"</b>	has the meaning given to it in Paragraph 5.1 of this Schedule;
<b>"Termination Assistance Period"</b>	the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule;

<b>"Transferable Assets"</b>	Exclusive Assets which are capable of legal transfer to the Buyer;
<b>"Transferable Contracts"</b>	Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
<b>"Transferring Assets"</b>	has the meaning given to it in Paragraph 8.2.1 of this Schedule;
<b>"Transferring Contracts"</b>	has the meaning given to it in Paragraph 8.2.3 of this Schedule.

## **2. Supplier must always be prepared for Contract exit and SOW exit**

2.1 The Supplier shall within 30 days from the Call-Off Contract Start Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.

2.2 During the Contract Period, the Supplier shall promptly:

- 2.2.1 create and maintain a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables; and
- 2.2.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Deliverables' IPR asset management system which includes all Document and Source Code repositories.

("Registers").

2.3 The Supplier shall:

- 2.3.1 ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and
- 2.3.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.

2.4 Each Party shall appoint an Exit Manager within three (3) Months of the

Call-Off Contract Start Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of each SOW and this Contract.

### **3. Assisting re-competition for Deliverables**

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

### **4. Exit Plan**

- 4.1 The Supplier shall, within three (3) Months after the Start Date, deliver to the Buyer a Call-Off Contract and SOW Exit Plan which complies with the requirements set out in Paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Buyer.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
  - 4.3.1 a detailed description of both the transfer and cessation processes, including a timetable (this may require modification to SOW Exit Plan provisions to be updated and incorporated as part of the SOW;
  - 4.3.2 how the Deliverables will transfer to the Replacement Supplier

and/or the Buyer;

- 4.3.3 details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
- 4.3.4 proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
- 4.3.5 proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
- 4.3.6 proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
- 4.3.7 proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
- 4.3.8 proposals for the disposal of any redundant Deliverables and materials;
- 4.3.9 how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
- 4.3.10 any other information or assistance reasonably required by the Buyer or a Replacement Supplier.

4.4 The Supplier shall:

- 4.4.1 maintain and update the Exit Plan (and risk management plan) no less frequently than:
    - (a) prior to each SOW and no less than every six (6) months throughout the Contract Period; and
    - (b) no later than twenty (20) Working Days after a request from the the Buyer for an up-to-date copy of the Exit Plan;
    - (c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice;
    - (d) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Deliverables (including all changes under the Variation Procedure); and
  - 4.4.2 jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.
- 4.5 Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4 (as the

context requires), shall that draft become the Exit Plan for this Contract.  
4.6A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

## 5. Termination Assistance

5.1 The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable, in the case of the Call-Off Contract and each SOW (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

- 5.1.1 the nature of the Termination Assistance required; and
- 5.1.2 the start date and initial period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the End Date.

5.2 The Buyer shall have an option to extend the Termination Assistance Period beyond the initial period specified in the Termination Assistance Notice in one or more extensions, in each case provided that:

- 5.2.1 no such extension shall extend the Termination Assistance Period beyond the date twelve (12) Months after the End Date; and



- 5.2.2 the Buyer shall notify the Supplier of any such extension no later than twenty (20) Working Days prior to the date on which the Termination Assistance Period is otherwise due to expire.
- 5.3The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.
- 5.4In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

## 5. Termination Assistance

- 5.1The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable, in the case of the Call-Off Contract and each SOW (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
  - 5.1.1 the nature of the Termination Assistance required; and
  - 5.1.2 the start date and initial period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the End Date.
- 5.2The Buyer shall have an option to extend the Termination Assistance Period beyond the initial period specified in the Termination Assistance Notice in one or more extensions, in each case provided that:
  - 5.2.1 no such extension shall extend the Termination Assistance Period beyond the date twelve (12) Months after the End Date; and
  - 5.2.2 the Buyer shall notify the Supplier of any such extension no later than twenty (20) Working Days prior to the date on which the Termination Assistance Period is otherwise due to expire.
- 5.3The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.
- 5.4In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

## **6. Termination Assistance Period**

6.1 Throughout the Termination Assistance Period the Supplier shall:

- 6.1.1 continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance;
- 6.1.2 provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;
- 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
- 6.1.4 subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Performance Indicators (PI's) or Service Levels, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Contract;
- 6.1.5 at the Buyer's request and on reasonable notice, deliver up-to-date Registers to the Buyer;
- 6.1.6 seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.

6.2 If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.

6.3 If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels or KPI, the Parties shall vary the relevant KPIs, Service Levels and/or the applicable Service Credits accordingly.

## **7. Obligations when the contract is terminated**

7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.

7.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:

- 7.2.1 vacate any Buyer Premises;
- 7.2.2 remove the Supplier Equipment together with any other materials

used by the Supplier to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier;

7.2.3 provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:

- (a) such information relating to the Deliverables as remains in the possession or control of the Supplier; and
- (b) such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.

7.3 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.

## **8. Assets, Sub-contracts and Software**

8.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:

- 8.1.1 terminate, enter into or vary any Sub-Contract or licence for any software in connection with the Deliverables; or
- 8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.

8.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier, the Buyer shall notify the Supplier setting out:

8.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("**Transferring Assets**");

8.2.2 which, if any, of:

(a) the Exclusive Assets that are not Transferable Assets; and

(b) the Non-Exclusive Assets,

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

8.2.3 which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "**Transferring Contracts**"), in order for the Buyer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services.

8.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.

8.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.

8.5 Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

8.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

8.5.2 procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.

8.6 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.

8.7The Buyer shall:

8.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

8.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

8.8The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.

8.9The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 19 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

## **9. No charges**

9.1Unless otherwise stated, the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Schedule.

## **10.Dividing the bills**

10.1 All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:

10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;

10.1.2 the Buyer or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

10.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

# Call-Off Schedule 13 (Implementation Plan and Testing)

## Part A - Implementation

### 1. definitions

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

<b>"Delay"</b>	a) a delay in the Achievement of a Milestone by its Milestone Date; or b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;
<b>"Deliverable Item"</b>	1an item or feature in the supply of the Deliverables delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan;
<b>"Milestone Payment"</b>	2a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;
<b>Implementation Period"</b>	3has the meaning given to it in Paragraph 7.1;

### 2. Agreeing and following the Implementation Plan

2.1 A draft of the Implementation Plan is set out in the Annex to this Schedule. The Supplier shall provide a further draft Implementation Plan 14 days after the Call-Off Contract Start Date.

2.2 The draft Implementation Plan:

2.2.1 must contain information at the level of detail necessary to manage the implementation stage effectively for the whole Call-Off Contract and each Statement of Work issued under it for the supply of Deliverables and as the Buyer may otherwise require;

- 2.2.2 shall provide details on how the required Social Value commitments will be delivered through the Call-Off Contract; and
  - 2.2.3 it shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
- 2.3 Following receipt of the draft Implementation Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the Implementation Plan. If the Parties are unable to agree the contents of the Implementation Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 2.4 The Supplier shall provide each of the Deliverable Items identified in the Implementation Plan by the date assigned to that Deliverable Item in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.
- 2.5 The Supplier shall also provide as required or requested reports to the Buyer concerning activities and impacts arising from Social Value including in the Implementation Plan.
- 2.6 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and report to the Buyer on such performance.
- 2.7 The Supplier shall, in relation to each SOW, incorporate within it all Implementation Plan and Testing requirements for the satisfactory completion of each Deliverable Item to be provided under that SOW.

### **3. Reviewing and changing the Implementation Plan**

- 3.1 Subject to Paragraph 4.3, the Supplier shall keep the Implementation Plan under review in accordance with the Buyer's instructions and ensure that it is updated on a regular basis.
- 3.2 The Buyer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 3.3 Changes to any Milestones, Milestone Payments and Delay Payments shall only be made in accordance with the Variation Procedure.
- 3.4 Time in relation to compliance with the Implementation Plan shall be of the essence and failure of the Supplier to comply with the Implementation Plan shall be a material Default.

#### **4. Security requirements before the Start Date**

- 4.1 The Supplier shall note that it is incumbent upon them to understand the lead-in period for security clearances and ensure that all Supplier Staff have the necessary security clearance in place before the Call-Off Start Date. The Supplier shall ensure that this is reflected in their Implementation Plans.
- 4.2 The Supplier shall ensure that all Supplier Staff and Subcontractors do not access the Buyer's IT systems, or any IT systems linked to the Buyer, unless they have satisfied the Buyer's security requirements.
- 4.3 The Supplier shall be responsible for providing all necessary information to the Buyer to facilitate security clearances for Supplier Staff and Subcontractors in accordance with the Buyer's requirements.
- 4.4 The Supplier shall provide the names of all Supplier Staff and Subcontractors and inform the Buyer of any alterations and additions as they take place throughout the Call-Off Contract.
- 4.5 The Supplier shall ensure that all Supplier Staff and Subcontractors requiring access to the Buyer Premises have the appropriate security clearance. It is the Supplier's responsibility to establish whether or not the level of clearance will be sufficient for access. Unless prior approval has been received from the Buyer, the Supplier shall be responsible for meeting the costs associated with the provision of security cleared escort services.
- 4.6 If a property requires Supplier Staff or Subcontractors to be accompanied by the Buyer's Authorised Representative, the Buyer must be given reasonable notice of such a requirement, except in the case of emergency access.

#### **5. What to do if there is a Delay**

- 5.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract it shall:
  - 5.1.1 notify the Buyer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;
  - 5.1.2 include in its notification an explanation of the actual or anticipated impact of the Delay;
  - 5.1.3 comply with the Buyer's instructions in order to address the impact of the Delay or anticipated Delay; and
  - 5.1.4 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.



## 6. Compensation for a Delay

- 6.1 If Delay Payments have been included in the Implementation Plan and a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Buyer such Delay Payments (calculated as set out by the Buyer in the Implementation Plan) and the following provisions shall apply:
  - 6.1.1 the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to Achieve the corresponding Milestone;
  - 6.1.2 Delay Payments shall be the Buyer's exclusive financial remedy for the Supplier's failure to Achieve a Milestone by its Milestone Date except where:
    - (a) the Buyer is entitled to or does terminate this Contract pursuant to Clause 10.4 (When CCS or the Buyer can end this contract); or
    - (b) the delay exceeds the number of days (the "**Delay Period Limit**") specified in the Implementation Plan commencing on the relevant Milestone Date;
  - 6.1.3 the Delay Payments will accrue on a daily basis from the relevant Milestone Date until the date when the Milestone is Achieved;
  - 6.1.4 no payment or other act or omission of the Buyer shall in any way affect the rights of the Buyer to recover the Delay Payments or be deemed to be a waiver of the right of the Buyer to recover any such damages; and
  - 6.1.5 Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 11 (How much you can be held responsible for).

## 7. Implementation Plan

- 7.1 The Implementation Period will be a [six (6)] Month period for the Call-Off Contract and for the duration of each SOW.
- 7.2 During the Implementation Period, the incumbent supplier shall retain full responsibility for all existing services until the Call-Off Start Date or as otherwise formally agreed with the Buyer in each SOW. The Supplier's full service obligations shall formally be assumed on the Call-Off Start Date as set out in Order Form.
- 7.3 In accordance with the Implementation Plan, the Supplier shall:
  - 7.3.1 work cooperatively and in partnership with the Buyer, incumbent supplier, and other Framework Supplier(s), where

applicable, to understand the scope of Services to ensure a mutually beneficial handover of the Services;

7.3.2 work with the incumbent supplier and Buyer to assess the scope of the Services and prepare a plan which demonstrates how they will mobilise the Services;

7.3.3 liaise with the incumbent Supplier to enable the full completion of the Implementation Period activities; and

7.3.4 produce a Implementation Plan, to be agreed by the Buyer, for carrying out the requirements within the Implementation Period including, key Milestones and dependencies.

7.4 The Implementation Plan will include detail stating:

7.4.1 how the Supplier will work with the incumbent Supplier and the Buyer Authorised Representative to capture and load up information such as asset data ; and

7.4.2 a communications plan, to be produced and implemented by the Supplier, but to be agreed with the Buyer, including the frequency, responsibility for and nature of communication with the Buyer and end users of the Services.

7.5 In addition, the Supplier shall:

7.5.1 appoint a Supplier Authorised Representative who shall be responsible for the management of the Implementation Period, to ensure that the Implementation Period is planned and resourced adequately, and who will act as a point of contact for the Buyer;

7.5.2 mobilise all the Services specified in the Specification within the Call-Off Contract and each SOW;

7.5.3 produce a Implementation Plan report for each Buyer Premises to encompass programmes that will fulfil all the Buyer's obligations to landlords and other tenants:

(a) the format of reports and programmes shall be in accordance with the Buyer's requirements and particular attention shall be paid to establishing the operating requirements of the occupiers when preparing these programmes which are subject to the Buyer's approval; and

(b) the Parties shall use reasonable endeavours to agree the contents of the report but if the Parties are unable to agree the contents within twenty (20) Working Days of its submission by the Supplier to the Buyer, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

- 7.5.4 manage and report progress against the Implementation Plan both at a Call-Off Contract level (which shall include an update on costings) and SOW level;
- 7.5.5 construct and maintain a Implementation risk and issue register in conjunction with the Buyer detailing how risks and issues will be effectively communicated to the Buyer in order to mitigate them;
- 7.5.6 attend progress meetings (frequency of such meetings shall be as set out in the Order Form and each SOW) in accordance with the Buyer's requirements during the Implementation Period. Implementation meetings shall be chaired by the Buyer and all meeting minutes shall be kept and published by the Supplier; and
- 7.5.7 ensure that all risks associated with the Implementation Period are minimised to ensure a seamless change of control between incumbent provider and the Supplier.

## Annex 1: Implementation Plan

A.1 The Supplier shall provide a:

- (a) high level Implementation Plan for the Call-Off Contract within 14 days of contract signature  
; and
- (b) a detailed Implementation Plan for each SOW.

A.2 The Implementation Plan is set out below and the Milestones to be Achieved are identified below:

Milestone	Deliverable Items	Duration	Milestone Date	Buyer Responsibilities	Milestone Payments	Delay Payments
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

Milestones will be Achieved in accordance with this Call-Off Schedule 13: (Implementation Plan and Testing)

For the purposes of Paragraph 9.1.2 the Delay Period Limit shall be [insert number of days] .

## Part B - Testing

### 1. Definitions

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

<b>"Component"</b>	4any constituent parts of the Deliverables;
<b>"Material Test Issue"</b>	5a Test Issue of Severity Level 1 or Severity Level 2;
<b>"Satisfaction Certificate"</b>	6a certificate materially in the form of the document contained in Annex 2 issued by the Buyer when a Deliverable and/or Milestone has satisfied its relevant Test Success Criteria;
<b>"Severity Level"</b>	7the level of severity of a Test Issue, the criteria for which are described in Annex 1;
<b>"Test Issue Management Log"</b>	8a log for the recording of Test Issues as described further in Paragraph 8.1 of this Schedule;
<b>"Test Issue Threshold"</b>	9in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
<b>"Test Reports"</b>	10 the reports to be produced by the Supplier setting out the results of Tests;
<b>"Test Specification"</b>	11 the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 6.2 of this Schedule;
<b>"Test Strategy"</b>	12 a strategy for the conduct of Testing as described further in Paragraph 3.2 of this Schedule;

**"Test SuccessCriteria"** 13 in relation to a Test, the test success criteria for that Test as referred to in Paragraph 5 of this Schedule;

**"Test Witness"** 14 any person appointed by the Buyer pursuant to Paragraph 9 of this Schedule; and

**"Testing Procedures"** 15 the applicable testing procedures and Test Success Criteria set out in this Schedule.

## **2. How testing should work**

- 2.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, Test Specification and the Test Plan.
- 2.2 The Supplier shall not submit any Deliverable for Testing:
  - 2.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
  - 2.2.2 until the Buyer has issued a Satisfaction Certificate in respect of any prior, dependant Deliverable(s); and
  - 2.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
- 2.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 2.4 Prior to the issue of a Satisfaction Certificate, the Buyer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

### **3. Planning for testing**

- 3.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Start Date but in any case no later than twenty (20) Working Days after the Start Date.
- 3.2 The final Test Strategy shall include:
  - 3.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan;
  - 3.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
  - 3.2.3 the procedure to be followed should a Deliverable fail a Test, fail to satisfy the Test Success Criteria or where the Testing of a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;
  - 3.2.4 the procedure to be followed to sign off each Test;
  - 3.2.5 the process for the production and maintenance of Test Reports and a sample plan for the resolution of Test Issues;
  - 3.2.6 the names and contact details of the Buyer and the Supplier's Test representatives;
  - 3.2.7 a high level identification of the resources required for Testing including Buyer and/or third party involvement in the conduct of the Tests;
  - 3.2.8 the technical environments required to support the Tests; and
  - 3.2.9 the procedure for managing the configuration of the

Test environments.

#### **4. Preparing for Testing**

- 4.1 The Supplier shall develop Test Plans and submit these for Approval as soon as practicable but in any case no later than twenty (20) Working Days prior to the start date for the relevant Testing as specified in the Implementation Plan.
- 4.2 Each Test Plan shall include as a minimum:
  - 4.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be satisfied; and
  - 4.2.2 a detailed procedure for the Tests to be carried out.
- 4.3 The Buyer shall not unreasonably withhold or delay its approval of the Test Plan provided that the Supplier shall implement any reasonable requirements of the Buyer in the Test Plan.

#### **5. Passing Testing**

- 5.1 The Test Success Criteria for all Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 4.

#### **6. How Deliverables will be tested**

- 6.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days prior to the start of the relevant Testing (as specified in the Implementation Plan).
- 6.2 Each Test Specification shall include as a minimum:
  - 6.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Buyer and the extent to which it is equivalent to live operational data;
  - 6.2.2 a plan to make the resources available for Testing;
  - 6.2.3 Test scripts;
  - 6.2.4 Test pre-requisites and the mechanism for measuring them; and
  - 6.2.5 expected Test results, including:
    - (a) a mechanism to be used to capture and record Test results; and
    - (b) a method to process the Test results to establish their content.

## **7. Performing the tests**

- 7.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 7.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 9.3.
- 7.3 The Supplier shall notify the Buyer at least 10 Working Days in advance of the date, time and location of the relevant Tests and the Buyer shall ensure that the Test Witnesses attend the Tests.
- 7.4 The Buyer may raise and close Test Issues during the Test witnessing process.
- 7.5 The Supplier shall provide to the Buyer in relation to each Test:
  - 7.5.1 a draft Test Report not less than 2 Working Days prior to the date on which the Test is planned to end; and
  - 7.5.2 the final Test Report within 5 Working Days of completion of Testing.
- 7.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
  - 7.6.1 an overview of the Testing conducted;
  - 7.6.2 identification of the relevant Test Success Criteria that have/have not been satisfied together with the Supplier's explanation of why any criteria have not been met;
  - 7.6.3 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
  - 7.6.4 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 8.1; and
  - 7.6.5 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.
- 7.7 When the Supplier has completed a Milestone, it shall submit any Deliverables relating to that Milestone for Testing.
- 7.8 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Buyer shall be entitled to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.



- 7.9 If the Supplier successfully completes the requisite Tests, the Buyer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Deliverables are implemented in accordance with this Contract.

## **8. Discovering Problems**

- 8.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 8.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Buyer upon request.
- 8.3 The Buyer shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

## **9. Test witnessing**

- 9.1 The Buyer may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Buyer, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 9.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 9.3 The Test Witnesses:
- 9.3.1 shall actively review the Test documentation;
  - 9.3.2 will attend and engage in the performance of the Tests on behalf of the Buyer so as to enable the Buyer to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
  - 9.3.3 shall not be involved in the execution of any Test;

- 9.3.4 shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
- 9.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Buyer to assess whether the Tests have been Achieved;
- 9.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- 9.4 may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

## **10. Auditing the quality of the test**

- 10.1 The Buyer or an agent or contractor appointed by the Buyer may perform on-going quality audits in respect of any part of the Testing (each a "**Testing Quality Audit**") subject to the provisions set out in the agreed Quality Plan.
- 10.2 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 10.3 The Buyer will give the Supplier at least 5 Working Days' written notice of the Buyer's intention to undertake a Testing Quality Audit.
- 10.4 The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Buyer to enable it to carry out the Testing Quality Audit.
- 10.5 If the Testing Quality Audit gives the Buyer concern in respect of the Testing Procedures or any Test, the Buyer shall prepare a written report for the Supplier detailing its concerns and the Supplier shall, within a reasonable timeframe, respond in writing to the Buyer's report.
- 10.6 In the event of an inadequate response to the written report from the Supplier, the Buyer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Buyer.

## **11. Outcome of the testing**

- 11.1 The Buyer will issue a Satisfaction Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 11.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Buyer shall notify the Supplier and:
  - 11.2.1 the Buyer may issue a Satisfaction Certificate conditional upon the remediation of the Test Issues;

- 11.2.2 the Buyer may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
  - 11.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Buyer's other rights and remedies, such failure shall constitute a material Default.
- 11.3 The Buyer shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.
- 11.4 The Buyer shall issue a Satisfaction Certificate in respect of a given Milestone as soon as is reasonably practicable following:
  - 11.4.1 the issuing by the Buyer of Satisfaction Certificates and/or conditional Satisfaction Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
  - 11.4.2 performance by the Supplier to the reasonable satisfaction of the Buyer of any other tasks identified in the Implementation Plan as associated with that Milestone.
- 11.5 The grant of a Satisfaction Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Implementation Plan and Clause 4 (Pricing and payments).
- 11.6 If a Milestone is not Achieved, the Buyer shall promptly issue a report to the Supplier setting out the applicable Test Issues and any other reasons for the relevant Milestone not being Achieved.
- 11.7 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Buyer shall issue a Satisfaction Certificate.
- 11.8 If there is one or more Material Test Issue(s), the Buyer shall refuse to issue a Satisfaction Certificate and, without prejudice to the Buyer's other rights and remedies, such failure shall constitute a material Default.
- 11.9 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Buyer may at its discretion (without waiving any rights in relation to the other options) choose to issue a Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:

- 11.9.1 any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the Buyer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Buyer within 10 Working Days of receipt of the Buyer's report pursuant to Paragraph 10.5); and
- 11.9.2 where the Buyer issues a conditional Satisfaction Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

## **12.Risk**

- 12.1 The issue of a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:
  - 12.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Buyer's requirements for that Deliverable or Milestone; or
  - 12.1.2 affect the Buyer's right subsequently to reject all or any element of the Deliverables and/or any Milestone to which a Satisfaction Certificate relates.

# **Annex 1: Test Issues – Severity Levels**

## **1. Severity 1 Error**

- 1.1 This is an error that causes non-recoverable conditions, e.g. it is not possible to continue using a Component.

## **2. Severity 2 Error**

- 2.1 This is an error for which, as reasonably determined by the Buyer, there is no practicable workaround available, and which:
  - 2.1.1 causes a Component to become unusable;
  - 2.1.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
  - 2.1.3 has an adverse impact on any other Component(s) or any other area of the Deliverables;

## **3. Severity 3 Error**

- 3.1 This is an error which:
  - 3.1.1 causes a Component to become unusable;
  - 3.1.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
  - 3.1.3 has an impact on any other Component(s) or any other area of the Deliverables;but for which, as reasonably determined by the Buyer, there is a practicable workaround available;

## **4. Severity 4 Error**

- 4.1 This is an error which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Deliverables.

## **5. Severity 5 Error**

- 5.1 This is an error that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Deliverables.

## Annex 2: Satisfaction Certificate

To: [insert name of Supplier]

From: [insert name of Buyer]

[insert Date dd/mm/yyyy]

Dear Sirs,

### Satisfaction Certificate

Deliverable/Milestone(s): [Insert relevant description of the agreed Deliverables/Milestones].

We refer to the agreement ("**Call-Off Contract**") [insert Call-Off Contract reference number and any applicable SOW reference] relating to the provision of the [insert description of the Deliverables] between the [insert Buyer name] ("**Buyer**") and [insert Supplier name] ("**Supplier**") dated [insert Call-Off Start Date dd/mm/yyyy].

The definitions for any capitalised terms in this certificate are as set out in the Call-Off Contract.

[We confirm that all the Deliverables relating to [insert relevant description of Deliverables/agreed Milestones and/or reference number(s) from the Implementation Plan] have been tested successfully in accordance with the Test Plan [or that a conditional Satisfaction Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria].

[OR]

[This Satisfaction Certificate is granted on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with Clause 4 (Pricing and payments)].

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Buyer]



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

## SECTION 1 SERVICE LEVELS

### 1. Definitions

- 1.1 In this Section 1 of this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

<b>"Critical Service Level Failure"</b>		has the meaning given to it in the Order Form;
<b>"Service Level Failure"</b>	1	means a failure to meet the Service Level Performance Measure in respect of a Service Level;
<b>"Service Level Performance Measure"</b>	2	shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule;
<b>"Service Level Threshold"</b>	3	shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule.

### 2. What happens if you do not meet the Service Levels

- 2.1 The Supplier shall at all times provide the Deliverables to meet or exceed the Service Level Performance Measure for each Service Level.
- 2.2 The Supplier acknowledges that any Service Level Failure shall entitle the Buyer to the rights set out in Part A of this Schedule.
- 2.3 The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.
- 2.4 Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:
- 2.4.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date;

- 2.4.2 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards.

### 3. **Critical Service Level Failure**

On the occurrence of a Critical Service Level Failure the Buyer shall be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"), provided that the operation of this Paragraph 3 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for material Default.

## Part A: Service Levels

### 1. **Service Levels**

If the level of performance of the Supplier:

- 1.1 is likely to or fails to meet any Service Level Performance Measure; or
- 1.2 is likely to cause or causes a Critical Service Failure to occur,

the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:

- 1.2.1 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;
- 1.2.2 instruct the Supplier to comply with the Rectification Plan Process; and/or
- 1.2.3 if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for material Default).

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

- 2.1 The Buyer may ask for a Rectification Plan if the Supplier fails to meet any of the **Service Levels** ("Default") within Section 1 (Service Levels) in any 12-Month rolling period.
- 2.2 This Rectification Plan must clearly detail the improvements and associated timeframes within which the Supplier shall meet and achieve the Service Levels. The Rectification Plan must be provided in accordance with Clause 10.3 of the Core Terms and any failure to correct a Default in line with an accepted Rectification Plan, or failure to provide a Rectification Plan within 10 days of the request may result in

the Buyer exercising its right to terminate the Contract in accordance with Clause 10.4 of the Core Terms.

## Annex A to Part A: Services Levels Table

### Service Levels

Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	Buyer redress for Failure to provide Services at or above Service Levels
<p>Commencement of Supplier Solution (roles starting) within 10 Working Days of SOW Requirements being agreed by the Buyer and the Supplier.</p> <p>(or revised start date agreed by both Parties where scope has changed and recorded with a CCN)</p> <p>All roles must meet the required industry / NHSBSA Digital Playbook standards and any additional role requirements set out in the SOW.</p>	Performance / Timelines	<p>At least 90% at all times at all times. This will be based upon all SOWs within previous 12 calendar months.</p> <p><u>Target Levels</u> Good Target – 90%</p> <p>Approaching Target Threshold – 85%</p> <p>Requires Improvement Threshold – 80%</p> <p>Inadequate Threshold – 75%</p> <p>The scoring will apply to all SOWs completed within calendar months</p>	Achieving less than 75% of SOWs within agreed time	<p>Once below the Service Level Threshold – the Supplier will engage with the Buyer to provide a formal plan to remedy and ensure improvements achieved - Subject to Call-Off Schedule 10 (Rectification Plan)</p>

<p>Achievement of Fixed Price or Capped Time &amp; Materials SOW within initial agreed time/cost. (or time/cost agreed by both Parties where scope has changed and recorded with a CCN)</p>	<p>Accuracy / Performance / Timelines</p>	<p>At least 90% at all times at all times. This will be based upon all SOWs within previous 12 calendar months.</p> <p><u>Target Levels</u> Good Target – 90%</p> <p>Approaching Target Threshold – 85%</p> <p>Requires Improvement Threshold – 80%</p> <p>Inadequate Threshold – 75%</p> <p>The scoring will apply to all SOWs completed within calendar months</p>	<p>Achieving less than 75% of SOWs within agreed time/cost</p>	<p>Once below the Service Level Threshold – any further SOW completed outside of agreed time/cost will incur 5% Charge of full invoiced SOW cost.</p> <p>The option to Charge will be not be applied until after the 4th SOW has commenced or 6 months after contract commencement – whichever is sooner.</p> <p>Once below the Service Level Threshold – the Supplier will engage with the Buyer to provide a formal plan to remedy and ensure improvements achieved - Subject to Call-Off Schedule 10 (Rectification Plan) Once below the Service Level Threshold – the Supplier will engage with the Buyer to provide a formal plan to remedy and ensure improvements achieved - Subject to Call-Off Schedule 10 (Rectification Plan)</p>
<p>Service Level applies to all SOWs completed within full period of contract.</p>				

<p>Achieving effective delivery of Time &amp; Material SOWs.</p> <p>Completion of Sprint Points agreed / recorded at start of each Sprint (Where not applicable/achievable and agreed by the Buyer, an alternative criteria can be used)</p> <p>At least 90% of agreed Sprint Points (or alternative criteria) to be achieved/accepted in each Sprint(or agreed time period).</p> <p>Scoring will be based upon cumulative performance data from contract start date, and then 12 calendar month period.</p>	<p>Accuracy / Performance / Quality</p>	<p>At least 90% of Sprints to achieve minimum of 90% of agreed Sprint Points (or agreed alternative criteria)</p> <p>Target Levels Good Target – 90% (achieving at least 90% of agreed Sprint Points)</p> <p>Approaching Target Threshold – 85% (achieving at least 90% of agreed Sprint Points)</p> <p>Requires Improvement Threshold – 80% (achieving at least 90% of agreed Sprint Points)</p> <p>Inadequate Threshold – 75% (achieving at least 90% of agreed Sprint Points)</p> <p>The scoring will apply to all Sprints that have a completion date within a calendar month.</p>	<p>Less than 75% of Sprints within any given SOW achieving lower than 90% of agreed Sprint Points (or alternative criteria). Performance relates to all sprints completed within each calendar month.</p>	<p>Once below the- Service Level Threshold – the Supplier will engage with the Buyer to provide a formal plan to remedy and ensure improvements achieved - Subject to Call-Off Schedule 10 (Rectification Plan) Once below the Service Level Threshold – the Supplier will engage with the Buyer to provide a formal plan to remedy and ensure improvements achieved - Subject to Call-Off Schedule 10 (Rectification Plan)</p>
<p>Timely Onboarding of new starters on Contract/SOW.</p> <p>Achieve agreed NHSBSA criteria for completion of onboarding activity within 10 working days from start date of role (activities as set out within Call-Off Contract)</p>	<p>Performance /Timelines</p>	<p>At least 90% at all times</p> <p>Good Target – 90%</p> <p>Approaching Target Threshold – 85%</p> <p>Requires Improvement Threshold – 80%</p> <p>Inadequate Threshold - 75%</p>	<p>Achieving less than 75%</p>	<p>Once below the Service Level Threshold – the Supplier will engage with the Buyer to provide a formal plan to remedy and ensure improvements achieved - Subject to Call-Off Schedule 10 (Rectification Plan)</p>

Accurate billing by Supplier  As detailed within the contract	Accuracy /Timelines	At least 95% at all times  Good Target – 95%  Approaching Target Threshold – 90%  Requires Improvement Threshold – 85%  Inadequate Threshold – 80%	Achieving less than 80% of accurate invoicing	Once below the Service Level Threshold – the Supplier will engage with the Buyer to provide a formal plan to remedy and ensure improvements achieved - Subject to Call-Off Schedule 10 (Rectification Plan)
Achievement of NHSBSA quality and delivery standards.  The quality and delivery of the SOW is to be reviewed each month by the NHSBSA Delivery Manager.	Quality	All SOWs are to achieve the required NHSBSA standard for the respective role/outcomes each month.	Achieving less than 80% of SOWs within agreed time/cost	Once below the Service Level Threshold – the Supplier will engage with the Buyer to provide a formal plan to remedy and ensure improvements achieved - Subject to Call-Off Schedule 10 (Rectification Plan)
For any Project/Service specific arrangement, SLA/KPIs can be included within the Statement of Work.  Example criteria would be:  * Number of Development Code reviews (no more than 2)	Performance /Timelines			Once below the Service Level Threshold (set out within SOW) – the Supplier will engage with the Buyer to provide a formal plan to remedy and ensure improvements achieved - Subject to Call-Off Schedule 10 (Rectification Plan)
Social Value - SLA/KPIs will be mutually agreed with the successful supplier linked to the response given for the Social Value Questions within the tender.				To be agreed within 3 months of contract signature

## Part B: Performance Monitoring

### 2. Performance Monitoring and Performance Review

- 2.1 Within twenty (20) Working Days of the Start Date the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon

as reasonably possible.

- 2.2 The Supplier shall provide the Buyer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Paragraph 1.1 of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
  - 2.2.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
  - 2.2.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
  - 2.2.3 details of any Critical Service Level Failures;
  - 2.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence; and
  - 2.2.5 such other details as the Buyer may reasonably require from time to time.
- 2.3 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:
  - 2.3.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location, format and time (within normal business hours) as the Buyer shall reasonably require;
  - 2.3.2 be attended by the Supplier's Representative and the Buyer's Representative; and
  - 2.3.3 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer's Representative and any other recipients agreed at the relevant meeting.
- 2.4 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.
- 2.5 The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier for any specified Service Period.

### 3. **Satisfaction Surveys**

- 3.1 The Buyer may undertake satisfaction surveys in respect of the Supplier's provision of the Deliverables. The Buyer shall be entitled to notify the Supplier of any aspects of their performance of the provision

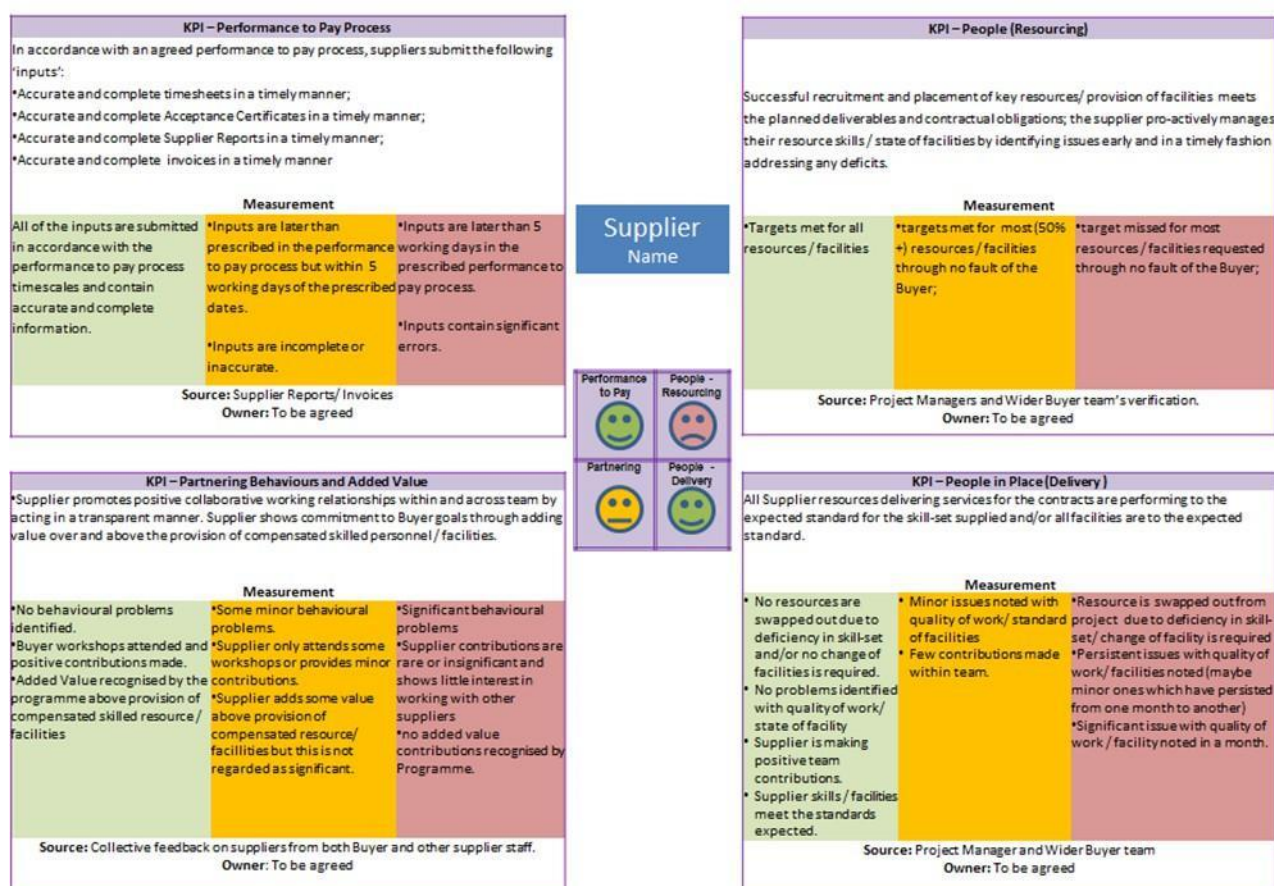
of the Deliverables which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.



## SECTION 2 BALANCED SCORECARD

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

### Balanced Scorecard



- 1.2 The purpose of the Balanced Scorecard is to promote contract management activity through measurement of the Supplier's performance against KPIs. The Buyer and Supplier shall agree the content of the Scorecard before the Call-Off Contract Start Date including the Material KPIs as defined in Framework Schedule 4 (Framework Management). Targets and measures to be listed in the Scorecard (example above for guidance only) should be tailored to meet the Buyer's needs and the Supplier's competences.

1.3 The recommended process for using the Balanced Scorecard is as follows:

- the Buyer and Supplier agree a template Balanced Scorecard together with a performance management plan which clearly outlines the responsibilities and actions that will be taken if agreed performance levels are not achieved.
- on a pre-agreed schedule (for example, Monthly) both the Buyer and the Supplier provide a rating on the Supplier's performance
- following the initial rating, both Parties meet to review the scores and agree an overall final score for each KPI
- following agreement of final scores, the process is repeating as per the agreed schedule

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

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

## **3. Performance Monitoring and Performance Review**

- 3.1 Within twenty (20) Working Days of the Start Date the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of KPIs in the Balanced Scorecard will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 3.2 The Supplier shall provide the Buyer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the

process and timescales agreed which shall contain, as a minimum, the following information in respect of the relevant KPIs just ended:

- 3.2.1 for each KPI, the actual performance achieved over the relevant period;
  - 3.2.2 a summary of all failures to achieve KPIs that occurred during that period;
  - 3.2.3 details of any failures of KPIs across the Call-Off Contract and, if applicable, each one or more SOW;
  - 3.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence; and
  - 3.2.5 such other details as the Buyer may reasonably require from time to time.
- 3.3 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:
- 3.3.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location, format and time (within normal business hours) as the Buyer shall reasonably require;
  - 3.3.2 be attended by the Supplier's Representative and the Buyer's Representative; and
  - 3.3.3 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer's Representative and any other recipients agreed at the relevant meeting.
- 3.4 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.
- 3.5 The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier for any specified period.

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

## 1. Definitions

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

**"Operational Board"** the board established in accordance with paragraph 4.1 of this Schedule;

**"Project Manager"** the manager appointed in accordance with paragraph 2.1 of this Schedule;

## 2. Project Management

2.1 The Supplier and the Buyer shall each appoint a Project Manager for the purposes of this Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.

2.2 The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.

2.3 Without prejudice to paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.

## 3. Role of the Supplier Contract Manager

3.1 The Supplier's Contract Manager's shall be:

3.1.1 the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;

3.1.2 able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Contract Manager's responsibilities and obligations;

3.1.3 able to cancel any delegation and recommence the position himself; and

3.1.4 replaced only after the Buyer has received notification of the proposed change.

3.2 The Buyer may provide revised instructions to the Supplier's Contract Managers in regards to the Contract and it will be the Supplier's Contract

Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.

- 3.3 Receipt of communication from the Supplier's Contract Manager's by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Contract.

#### **4. Role of the Operational Board**

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

#### **5. Contract Risk Management**

- 5.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Call-Off Contract.
- 5.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
- 5.2.1 the identification and management of risks;
  - 5.2.2 the identification and management of issues; and
  - 5.2.3 monitoring and controlling project plans.
- 5.3 The Supplier allows the Buyer to inspect at any time within working hours

- the accounts and records which the Supplier is required to keep.
- 5.4 The Supplier will maintain a risk register of the risks relating to the Call-Off Contract which the Buyer's and the Supplier have identified.

## **Annex: Contract Boards**

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

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

To be mutually agreed within three months from date of signature with NHSBSA Commercial Contract Management.

# Call-Off Schedule 18 (Background Checks)

## 1. When you should use this Schedule

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

## 2. Definitions

**“Relevant Conviction”** means any conviction listed in Annex 1 to this Schedule.

## 3. Relevant Convictions

3.1.1 The Supplier must ensure that no person who discloses that they have a Relevant Conviction, or a person who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Deliverables without Approval.

3.1.2 Notwithstanding Paragraph 3.1.1 for each member of Supplier Staff who, in providing the Deliverables, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Buyer owes a special duty of care, the Supplier must (and shall procure that the relevant Sub-Contractor must):

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

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



## **Annex 1 – Relevant Convictions**

**[Insert** Relevant Convictions here]

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

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

**[Insert the Specification]**

### **Worker Engagement Status (including IR35 status)**

Where the Buyer has assessed its requirement and it is for Resource, the IR35 status of the Supplier Staff in Key Roles must be detailed in this Specification and, if applicable, in each Statement of Work.

## **Core Terms**

## **1. Definitions used in the contract**

Interpret this Contract using Joint Schedule 1 (Definitions).

## **2. How the contract works**

2.1 The Supplier is eligible for the award of Call-Off Contracts during the Framework Contract Period.

2.2 CCS does not guarantee the Supplier any exclusivity, quantity or value of work under the Framework Contract.

2.3 CCS has paid one penny to the Supplier legally to form the Framework Contract. The Supplier acknowledges this payment.

2.4 If the Buyer decides to buy Deliverables under the Framework Contract it must use Framework Schedule 7 (Call-Off Award Procedure) and must state its requirements using Framework Schedule 6 (Order Form Template and Call-Off Schedules). If allowed by the Regulations, the Buyer can:

- (a) make changes to Framework Schedule 6 (Order Form Template and Call-Off Schedules);
- (b) create new Call-Off Schedules;
- (c) exclude optional template Call-Off Schedules; and/or
- (d) use Special Terms in the Order Form to add or change terms.

2.5 Each Call-Off Contract:

- (a) is a separate Contract from the Framework Contract;
- (b) is between a Supplier and a Buyer;
- (c) includes Core Terms, Schedules and any other changes or items in the completed Order Form; and
- (d) survives the termination of the Framework Contract.

2.6 Where the Supplier is approached by any Other Contracting Authority requesting Deliverables or substantially similar goods or services, the Supplier must tell them about this Framework Contract before accepting their order.

2.7 The Supplier acknowledges it has all the information required to perform its obligations under each Contract before entering into a Contract. When information is provided by a Relevant Authority no warranty of its accuracy is given to the Supplier.

2.8 The Supplier will not be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:

- (a) verify the accuracy of the Due Diligence Information; or
- (b) properly perform its own adequate checks.

2.9 CCS and the Buyer will not be liable for errors, omissions or misrepresentation of any information.

2.10 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

## **3. What needs to be delivered**

### **3.1 All deliverables**

3.1.1 The Supplier must provide Deliverables:

- (a) that comply with the Specification, the Framework Tender Response and, in relation to a Call-Off Contract, the Call-Off Tender (if there is one);
- (b) to a professional standard;

- (c) using reasonable skill and care;
- (d) using Good Industry Practice;
- (e) using its own policies, processes and internal quality control measures as long as they do not conflict with the Contract;
- (f) on the dates agreed; and
- (g) that comply with Law.

3.1.2 The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects.

### **3.2 Goods clauses**

3.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.

3.2.2 All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.

3.2.3 The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.

3.2.4 Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.

3.2.5 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.

3.2.6 The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.

3.2.7 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.

3.2.8 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.

3.2.9 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.

3.2.10 The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.

3.2.11 The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than 14 days notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.

3.2.12 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they do not conform with Clause 3. If the Supplier does not do this it will pay the Buyer's costs including repair or re-supply by a third party.

### **3.3 Services clauses**

3.3.1 Late Delivery of the Services will be a Default of a Call-Off Contract.

3.3.2 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions.

3.3.3 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services.

3.3.4 The Supplier must allocate sufficient resources and appropriate expertise to each Contract.

3.3.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.

3.3.6 The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.

3.3.7 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

## **4. Pricing and payments**

4.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Order Form.

4.2 CCS must invoice the Supplier for the Management Charge and the Supplier must pay it using the process in Framework Schedule 5 (Management Charges and Information).

4.3 All Charges and the Management Charge:

- (a) exclude VAT, which is payable on provision of a valid VAT invoice; and
- (b) include all costs connected with the Supply of Deliverables.

4.4 The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the Order Form.

4.5 A Supplier invoice is only valid if it:

- (a) includes all appropriate references including the Contract reference number and other details reasonably requested by the Buyer;
- (b) includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any); and
- (c) does not include any Management Charge (the Supplier must not charge the Buyer in any way for the Management Charge).

4.6 The Buyer must accept and process for payment an undisputed Electronic Invoice received from the Supplier.

4.7 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.

4.8 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, CCS or the Buyer can publish the details of the late payment or non-payment.

4.9 If CCS or the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables, then CCS or the Buyer may require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items.

4.10 If CCS or the Buyer uses Clause 4.9 then the Framework Prices (and where applicable, the Charges) must be reduced by an agreed amount by using the Variation Procedure.

4.11 The Supplier has no right of set-off, counterclaim, discount or abatement unless they are ordered to do so by a court.

## **5. The buyer's obligations to the supplier**

5.1 If Supplier Non-Performance arises from an Authority Cause:

- (a) neither CCS or the Buyer can terminate a Contract under Clause 10.4.1;
- (b) the Supplier is entitled to reasonable and proven additional expenses and to relief from liability and Deduction under this Contract;
- (c) the Supplier is entitled to additional time needed to make the Delivery; and
- (d) the Supplier cannot suspend the ongoing supply of Deliverables.

5.2 Clause 5.1 only applies if the Supplier:

- (a) gives notice to the Party responsible for the Authority Cause within 10 Working Days of becoming aware;
- (b) demonstrates that the Supplier Non-Performance would not have occurred but for the Authority Cause; and
- (c) mitigated the impact of the Authority Cause.

## **6. Record keeping and reporting**

6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Order Form.

6.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract:

- (a) during the Contract Period;
- (b) for 7 years after the End Date; and
- (c) in accordance with UK GDPR,

including but not limited to the records and accounts stated in the definition of Audit in Joint Schedule 1.

6.3 The Relevant Authority or an Auditor can Audit the Supplier.

6.4 During an Audit, the Supplier must:

- (a) allow the Relevant Authority or any Auditor access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for an Audit; and
- (b) provide information to the Relevant Authority or to the Auditor and reasonable co-operation at their request.

6.5 Where the Audit of the Supplier is carried out by an Auditor, the Auditor shall be entitled to share any information obtained during the Audit with the Relevant Authority.

6.6 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:

- (a) tell the Relevant Authority and give reasons;
- (b) propose corrective action; and
- (c) provide a deadline for completing the corrective action.

6.7 The Supplier must provide CCS with a Self Audit Certificate supported by an audit report at the end of each Contract Year. The report must contain:

- (a) the methodology of the review;
- (b) the sampling techniques applied;
- (c) details of any issues; and
- (d) any remedial action taken.

6.8 The Self Audit Certificate must be completed and signed by an auditor or senior member of the Supplier's management team that is qualified in either a relevant audit or financial discipline.

## **7. Supplier staff**

7.1 The Supplier Staff involved in the performance of each Contract must:

- (a) be appropriately trained and qualified;
- (b) be vetted using Good Industry Practice and the Security Policy; and
- (c) comply with all conduct requirements when on the Buyer's Premises.

7.2 Where a Buyer decides one of the Supplier's Staff is not suitable to work on a contract, the Supplier must replace them with a suitably qualified alternative.

7.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 27.

7.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.

7.5 The Supplier indemnifies CCS and the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

## **8. Rights and protection**

8.1 The Supplier warrants and represents that:

- (a) it has full capacity and authority to enter into and to perform each Contract;
- (b) each Contract is executed by its authorised representative;
- (c) it is a legally valid and existing organisation incorporated in the place it was formed;
- (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform each Contract;
- (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under each Contract;
- (f) it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform each Contract;

- (g) it is not impacted by an Insolvency Event; and
- (h) it will comply with each Call-Off Contract.

8.2 The warranties and representations in Clauses 2.10 and 8.1 are repeated each time the Supplier provides Deliverables under the Contract.

8.3 The Supplier indemnifies both CCS and every Buyer against each of the following:

- (a) wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract; and
- (b) non-payment by the Supplier of any Tax or National Insurance.

8.4 All claims indemnified under this Contract must use Clause 26.

8.5 The description of any provision of this Contract as a warranty does not prevent CCS or a Buyer from exercising any termination right that it may have for breach of that clause by the Supplier.

8.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify CCS and every Buyer.

8.7 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

## **9. Intellectual Property Rights (IPRs)**

9.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to both:

- (a) receive and use the Deliverables; and
- (b) make use of the deliverables provided by a Replacement Supplier.

9.2 Any New IPR created under a Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Contract Period.

9.3 Where a Party acquires ownership of IPRs incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

9.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 9 or otherwise agreed in writing.

9.5 If there is an IPR Claim, the Supplier indemnifies CCS and each Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.



9.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:

- (a) obtain for CCS and the Buyer the rights in Clause 9.1 and 9.2 without infringing any third party IPR; or
- (b) replace or modify the relevant item with substitutes that do not infringe IPR without adversely affecting the functionality or performance of the Deliverables.

9.7 In spite of any other provisions of a Contract and for the avoidance of doubt, award of a Contract by the Buyer and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Supplier acknowledges that any authorisation by the Buyer under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific IPR involved.

## **10. Ending the contract or any subcontract**

### **10.1 Contract Period**

10.1.1 The Contract takes effect on the Start Date and ends on the End Date or earlier if required by Law.

10.1.2 The Relevant Authority can extend the Contract for the Extension Period by giving the Supplier no less than 3 Months' written notice before the Contract expires.

### **10.2 Ending the contract without a reason**

10.2.1 CCS has the right to terminate the Framework Contract at any time without reason by giving the Supplier at least 30 days' notice.

10.2.2 Each Buyer has the right to terminate their Call-Off Contract at any time without reason by giving the Supplier not less than 90 days' written notice.

### **10.3 Rectification plan process**

10.3.1 If there is a Default, the Relevant Authority may, without limiting its other rights, request that the Supplier provide a Rectification Plan, within 10 working days .

10.3.2 When the Relevant Authority receives a requested Rectification Plan it can either:

- (a) reject the Rectification Plan or revised Rectification Plan, giving reasons; or
- (b) accept the Rectification Plan or revised Rectification Plan (without limiting its rights) and the Supplier must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties.

10.3.3 Where the Rectification Plan or revised Rectification Plan is rejected, the Relevant Authority:

- (a) must give reasonable grounds for its decision; and
- (b) may request that the Supplier provides a revised Rectification Plan within 5 Working Days.

10.3.4 If the Relevant Authority rejects any Rectification Plan, including any revised Rectification Plan, the Relevant Authority does not have to request a revised Rectification Plan before exercising its right to terminate its Contract under Clause 10.4.3(a).

## **10.4 When CCS or the buyer can end a contract**

10.4.1 If any of the following events happen, the Relevant Authority has the right to immediately terminate its Contract by issuing a Termination Notice to the Supplier:

- (a) there is a Supplier Insolvency Event;
- (b) there is a Default that is not corrected in line with an accepted Rectification Plan;
- (c) the Supplier does not provide a Rectification Plan within 10 days of the request;
- (d) there is any material Default of the Contract;
- (e) there is any material Default of any Joint Controller Agreement relating to any Contract;
- (f) there is a Default of Clauses 2.10, 9, 14, 15, 27, 32 or Framework Schedule 9 (Cyber Essentials) (where applicable) relating to any Contract;
- (g) there is a consistent repeated failure to meet the Performance Indicators in Framework Schedule 4 (Framework Management);
- (h) there is a Change of Control of the Supplier which is not pre-approved by the Relevant Authority in writing;
- (i) if the Relevant Authority discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded; or
- (j) the Supplier or its Affiliates embarrass or bring CCS or the Buyer into disrepute or diminish the public trust in them.

10.4.2 CCS may terminate the Framework Contract if a Buyer terminates a Call-Off Contract for any of the reasons listed in Clause 10.4.1.

10.4.3 If any of the following non-fault based events happen, the Relevant Authority has the right to immediately terminate its Contract by issuing a Termination Notice to the Supplier:

- (a) the Relevant Authority rejects a Rectification Plan;
- (b) there is a Variation which cannot be agreed using Clause 24 (Changing the contract) or resolved using Clause 34 (Resolving disputes);
- (c) if there is a declaration of ineffectiveness in respect of any Variation; or
- (d) the events in 73 (1) (a) of the Regulations happen.

## **10.5 When the supplier can end the contract**

The Supplier can issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate a Call-Off Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the annual Contract Value within 30 days of the date of the Reminder Notice.

## **10.6 What happens if the contract ends**

10.6.1 Where a Party terminates a Contract under any of Clauses 10.2.1, 10.2.2, 10.4.1, 10.4.2, 10.4.3, 10.5 or 20.2 or a Contract expires all of the following apply:

- (a) The Buyer's payment obligations under the terminated Contract stop immediately.
- (b) Accumulated rights of the Parties are not affected.

- (c) The Supplier must promptly repay to the Buyer any and all Charges the Buyer has paid in advance in respect of Deliverables not provided by the Supplier as at the End Date.
- (d) The Supplier must promptly delete or return the Government Data except where required to retain copies by Law.
- (e) The Supplier must promptly return any of CCS or the Buyer's property provided under the terminated Contract.
- (f) The Supplier must, at no cost to CCS or the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).

10.6.2 In addition to the consequences of termination listed in Clause 10.6.1, where the Relevant Authority terminates a Contract under Clause 10.4.1 the Supplier is also responsible for the Relevant Authority's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period.

10.6.3 In addition to the consequences of termination listed in Clause 10.6.1, if either the Relevant Authority terminates a Contract under Clause 10.2.1 or 10.2.2 or a Supplier terminates a Call-Off Contract under Clause 10.5:

- (a) the Buyer must promptly pay all outstanding Charges incurred to the Supplier; and
- (b) the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated.

10.6.4 In addition to the consequences of termination listed in Clause 10.6.1, where a Party terminates under Clause 20.2 each Party must cover its own Losses.

10.6.5 The following Clauses survive the termination or expiry of each Contract: 3.2.10, 4.2, 6, 7.5, 9, 11, 12.2, 14, 15, 16, 17, 18, 31.3, 34, 35 and any Clauses and Schedules which are expressly or by implication intended to continue.

## **10.7 Partially ending and suspending the contract**

10.7.1 Where CCS has the right to terminate the Framework Contract it can suspend the Supplier's ability to accept Orders (for any period) and the Supplier cannot enter into any new Call-Off Contracts during this period. If this happens, the Supplier must still meet its obligations under any existing Call-Off Contracts that have already been signed.

10.7.2 Where CCS has the right to terminate a Framework Contract it is entitled to terminate all or part of it.

10.7.3 Where the Buyer has the right to terminate a Call-Off Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends a Contract it can provide the Deliverables itself or buy them from a third party.

10.7.4 The Relevant Authority can only partially terminate or suspend a Contract if the remaining parts of that Contract can still be used to effectively deliver the intended purpose.

10.7.5 The Parties must agree any necessary Variation required by Clause 10.7 using the Variation Procedure, but the Supplier may not either:

- (a) reject the Variation; or
- (b) increase the Charges, except where the right to partial termination is under Clause 10.2.

10.7.6 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under Clause 10.7.

## **10.8 When subcontracts can be ended**

At the Buyer's request, the Supplier must terminate any Subcontracts in any of the following events:

- (a) there is a Change of Control of a Subcontractor which is not pre-approved by the Relevant Authority in writing;
- (b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 10.4; or
- (c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Relevant Authority.

## **11. How much you can be held responsible for**

11.1 Each Party's total aggregate liability in each Contract Year under this Framework Contract (whether in tort, contract or otherwise) is no more than £1,000,000.

11.2 Each Party's total aggregate liability in each Contract Year under each Call-Off Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified in the Call-Off Order Form.

11.3 No Party is liable to the other for:

- (a) any indirect Losses; or
- (b) Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

11.4 In spite of Clause 11.1 and 11.2, neither Party limits or excludes any of the following:

- (a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
- (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
- (c) any liability that cannot be excluded or limited by Law;
- (d) its obligation to pay the required Management Charge or Default Management Charge.

11.5 In spite of Clauses 11.1 and 11.2, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5, 8.3(b), 9.5, 31.3 or Call-Off Schedule 2 (Staff Transfer) of a Contract.

11.6 In spite of Clauses 11.1, 11.2 but subject to Clauses 11.3 and 11.4, the Supplier's aggregate liability in each and any Contract Year under each Contract under Clause 14.8 shall in no event exceed the Data Protection Liability Cap.

11.7 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with each Contract, including any indemnities.

11.8 When calculating the Supplier's liability under Clause 11.1 or 11.2 the following items will not be taken into consideration:

- (a) Deductions; and
- (b) any items specified in Clauses 11.5 or 11.6.

11.9 If more than one Supplier is party to a Contract, each Supplier Party is jointly and severally liable for their obligations under that Contract.

## **12. Obeying the law**

12.1 The Supplier must use reasonable endeavours to comply with the provisions of Joint Schedule 5 (Corporate Social Responsibility).

12.2 To the extent that it arises as a result of a Default by the Supplier, the Supplier indemnifies the Relevant Authority against any fine or penalty incurred by the Relevant Authority pursuant to Law and any costs incurred by the Relevant Authority in defending any proceedings which result in such fine or penalty.

12.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 12.1 and Clauses 27 to 32.

## **13. Insurance**

The Supplier must, at its own cost, obtain and maintain the Required Insurances in Joint Schedule 3 (Insurance Requirements) and any Additional Insurances in the Order Form.

## **14. Data protection**

14.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Joint Schedule 11 (Processing Data).

14.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.

14.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every 6 Months.

14.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.

14.5 If at any time the Supplier suspects or has reason to believe that the Government Data provided under a Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Relevant Authority and immediately suggest remedial action.

14.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Relevant Authority may either or both:

- (a) tell the Supplier to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Relevant Authority receives notice, or the Supplier finds out about the issue, whichever is earlier; and/or
- (b) restore the Government Data itself or using a third party.

14.7 The Supplier must pay each Party's reasonable costs of complying with Clause 14.6 unless CCS or the Buyer is at fault.

14.8 The Supplier:

- (a) must provide the Relevant Authority with all Government Data in an agreed open format within 10 Working Days of a written request;
- (b) must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
- (c) must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
- (d) securely erase all Government Data and any copies it holds when asked to do so by CCS or the Buyer unless required by Law to retain it; and
- (e) indemnifies CCS and each Buyer against any and all Losses incurred if the Supplier breaches Clause 14 and any Data Protection Legislation.

## **15. What you must keep confidential**

15.1 Each Party must:

- (a) keep all Confidential Information it receives confidential and secure;
- (b) except as expressly set out in the Contract at Clauses 15.2 to 15.4 or elsewhere in the Contract, not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent; and
- (c) immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

15.2 In spite of Clause 15.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

- (a) where disclosure is required by applicable Law or by a court with the relevant jurisdiction if, to the extent not prohibited by Law, the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
- (b) if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;
- (c) if the information was given to it by a third party without obligation of confidentiality;
- (d) if the information was in the public domain at the time of the disclosure;
- (e) if the information was independently developed without access to the Disclosing Party's Confidential Information;
- (f) on a confidential basis, to its auditors;
- (g) on a confidential basis, to its professional advisers on a need-to-know basis; or
- (h) to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

15.3 In spite of Clause 15.1, the Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Relevant Authority at its request.

15.4 In spite of Clause 15.1, CCS or the Buyer may disclose Confidential Information in any of the following cases:

- (a) on a confidential basis to the employees, agents, consultants and contractors of CCS or the Buyer;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that CCS or the Buyer transfers or proposes to transfer all or any part of its business to;
- (c) if CCS or the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
- (d) where requested by Parliament; or
- (e) under Clauses 4.7 and 16.

15.5 For the purposes of Clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 15.

15.6 Transparency Information is not Confidential Information.

15.7 The Supplier must not make any press announcement or publicise the Contracts or any part of them in any way, without the prior written consent of the Relevant Authority and must take all reasonable steps to ensure that Supplier Staff do not either.

## **16. When you can share information**

16.1 The Supplier must tell the Relevant Authority within 48 hours if it receives a Request For Information.

16.2 Within five (5) Working Days of the Buyer's request the Supplier must give CCS and each Buyer full co-operation and information needed so the Buyer can:

- (a) publish the Transparency Information;
- (b) comply with any Freedom of Information Act (FOIA) request; and/or
- (c) comply with any Environmental Information Regulations (EIR) request.

16.3 The Relevant Authority may talk to the Supplier to help it decide whether to publish information under Clause 16. However, the extent, content and format of the disclosure is the Relevant Authority's decision in its absolute discretion.

## **17. Invalid parts of the contract**

If any part of a Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it is valid or enforceable.

## **18. No other terms apply**

The provisions incorporated into each Contract are the entire agreement between the Parties. The Contract replaces all previous statements, agreements and any course of dealings made between the Parties, whether written or oral, in relation to its subject matter. No other provisions apply.

## **19. Other people's rights in a contract**

No third parties may use the Contracts (Rights of Third Parties) Act 1999 (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

## **20. Circumstances beyond your control**

20.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under a Contract while the inability to perform continues, if it both:

- (a) provides a Force Majeure Notice to the other Party; and
- (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

20.2 Either Party can partially or fully terminate the affected Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.

## **21. Relationships created by the contract**

No Contract creates a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

## **22. Giving up contract rights**

A partial or full waiver or relaxation of the terms of a Contract is only valid if it is stated to be a waiver in writing to the other Party.

## **23. Transferring responsibilities**

23.1 The Supplier cannot assign, novate or transfer a Contract or any part of a Contract without the Relevant Authority's written consent.

23.2 The Relevant Authority can assign, novate or transfer its Contract or any part of it to any Central Government Body, public or private sector body which performs the functions of the Relevant Authority.

23.3 When CCS or the Buyer uses its rights under Clause 23.2 the Supplier must enter into a novation agreement in the form that CCS or the Buyer specifies.

23.4 The Supplier can terminate a Contract novated under Clause 23.2 to a private sector body that is experiencing an Insolvency Event.

23.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

23.6 If CCS or the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:

- (a) their name;
- (b) the scope of their appointment; and
- (c) the duration of their appointment.

## **24. Changing the contract**



24.1 Either Party can request a Variation which is only effective if agreed in writing and signed by both Parties.

24.2 The Supplier must provide an Impact Assessment either:

- (a) with the Variation Form, where the Supplier requests the Variation; or
- (b) within the time limits included in a Variation Form requested by CCS or the Buyer.

24.3 If the Variation cannot be agreed or resolved by the Parties, CCS or the Buyer can either:

- (a) agree that the Contract continues without the Variation; or
- (b) terminate the affected Contract, unless in the case of a Call-Off Contract, the Supplier has already provided part or all of the provision of the Deliverables, or where the Supplier can show evidence of substantial work being carried out to provide them; or
- (c) refer the Dispute to be resolved using Clause 34 (Resolving Disputes).

24.4 CCS and the Buyer are not required to accept a Variation request made by the Supplier.

24.5 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Framework Prices or the Charges.

24.6 If there is a Specific Change in Law or one is likely to happen during the Contract Period the Supplier must give CCS and the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, Framework Prices or a Contract and provide evidence:

- (a) that the Supplier has kept costs as low as possible, including in Subcontractor costs; and
- (b) of how it has affected the Supplier's costs.

24.7 Any change in the Framework Prices or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 24.1 to 24.4.

24.8 For 101(5) of the Regulations, if the Court declares any Variation ineffective, the Parties agree that their mutual rights and obligations will be regulated by the terms of the Contract as they existed immediately prior to that Variation and as if the Parties had never entered into that Variation.

## **25. How to communicate about the contract**

25.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they are delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective at 9:00am on the first Working Day after sending unless an error message is received.

25.2 Notices to CCS must be sent to the CCS Authorised Representative's address or email address in the Framework Award Form.

25.3 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Order Form.

25.4 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

## **26. Dealing with claims**

26.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.

26.2 At the Indemnifier's cost the Beneficiary must both:

- (a) allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and
- (b) give the Indemnifier reasonable assistance with the claim if requested.

26.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which can not be unreasonably withheld or delayed.

26.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that does not damage the Beneficiary's reputation.

26.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

26.6 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.

26.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:

- (a) the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; or
- (b) the amount the Indemnifier paid the Beneficiary for the Claim.

## **27. Preventing fraud, bribery and corruption**

27.1 The Supplier must not during any Contract Period:

- (a) commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2); or
- (b) do or allow anything which would cause CCS or the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.

27.2 The Supplier must during the Contract Period:

- (a) create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;
- (b) keep full records to show it has complied with its obligations under Clause 27 and give copies to CCS or the Buyer on request; and
- (c) if required by the Relevant Authority, within 20 Working Days of the Start Date of the relevant Contract, and then annually, certify in writing to the Relevant Authority, that they have complied with Clause 27, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.

27.3 The Supplier must immediately notify CCS and the Buyer if it becomes aware of any breach of Clauses 27.1 or 27.2 or has any reason to think that it, or any of the Supplier Staff, has either:

- (a) been investigated or prosecuted for an alleged Prohibited Act;
- (b) been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
- (c) received a request or demand for any undue financial or other advantage of any kind related to a Contract; or
- (d) suspected that any person or Party directly or indirectly related to a Contract has committed or attempted to commit a Prohibited Act.

27.4 If the Supplier notifies CCS or the Buyer as required by Clause 27.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.

27.5 In any notice the Supplier gives under Clause 27.3 it must specify the:

- (a) Prohibited Act;
- (b) identity of the Party who it thinks has committed the Prohibited Act; and
- (c) action it has decided to take.

## **28. Equality, diversity and human rights**

28.1 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:

- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
- (b) any other requirements and instructions which CCS or the Buyer reasonably imposes related to equality Law.

28.2 The Supplier must take all necessary steps, and inform CCS or the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on a Contract.

## **29. Health and safety**

29.1 The Supplier must perform its obligations meeting the requirements of:

- (a) all applicable Law regarding health and safety; and
- (b) the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier.

29.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they are aware of at the Buyer Premises that relate to the performance of a Contract.

## **30. Environment**

30.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.

30.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

## **31. Tax**

31.1 The Supplier must not breach any Tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. CCS and the Buyer cannot terminate a Contract where the Supplier has not paid a minor Tax or social security contribution.

31.2 Where the Charges payable under a Contract with the Buyer are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify CCS and the Buyer of it within 5 Working Days including:

- (a) the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and

(b) other information relating to the Occasion of Tax Non-Compliance that CCS and the Buyer may reasonably need.

31.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under a Call-Off Contract, the Supplier must both:

- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
- (b) indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.

31.4 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:

- (a) the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 31.3, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
- (b) the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
- (c) the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers is not good enough to demonstrate how it complies with Clause 31.3 or confirms that the Worker is not complying with those requirements; and
- (d) the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

## **32. Conflict of interest**

32.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.

32.2 The Supplier must promptly notify and provide details to CCS and each Buyer if a Conflict of Interest happens or is expected to happen.

32.3 CCS and each Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

## **33. Reporting a breach of the contract**

33.1 As soon as it is aware of it the Supplier and Supplier Staff must report to CCS or the Buyer any actual or suspected breach of:

- (a) Law;

- (b) Clause 12.1; or
- (c) Clauses 27 to 32.

33.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 33.1 to the Buyer or a Prescribed Person.

## **34. Resolving disputes**

34.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.

34.2 If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 34.3 to 34.5.

34.3 Unless the Relevant Authority refers the Dispute to arbitration using Clause 34.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

- (a) determine the Dispute;
- (b) grant interim remedies; and/or
- (c) grant any other provisional or protective relief.

34.4 The Supplier agrees that the Relevant Authority has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

34.5 The Relevant Authority has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 34.3, unless the Relevant Authority has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 34.4.

34.6 The Supplier cannot suspend the performance of a Contract during any Dispute.

## **35. Which law applies**

This Contract and any Disputes arising out of, or connected to it, are governed by English law.