



Crown
Commercial
Service

Research Marketplace Dynamic Purchasing System (DPS) Agreement

Reference: RM6018

CROWN COMMERCIAL SERVICE

and

[SUPPLIER NAME]

TABLE OF CONTENT

- [1. The Appointment](#)
 - [2. Services offered](#)
 - [3. DPS arrangement and award procedure](#)
 - [4. How Services will be bought \(Call for Competition Process\)](#)
 - [5. The Supplier's obligations under the DPS](#)
 - [6. Management information and Management Levy](#)
 - [7. Record keeping, confidentiality and transparency](#)
 - [8. General governance](#)
 - [9. DPS agreement termination and suspension](#)
 - [10. Insurance and liability](#)
 - [11. Variations to this DPS agreement](#)
 - [12. Transfer and Sub-contracting](#)
 - [13. Guarantees](#)
 - [14. Rights of third parties](#)
 - [15. Other provisions](#)
 - [16. Intellectual property right and indemnity](#)
 - [17. Complaints handling and resolution](#)
-
- [1. DPS SCHEDULE 1: DEFINITIONS AND INTERPRETATION](#)
 - [2. DPS SCHEDULE 2: KEY SUB-CONTRACTORS](#)
 - [3. DPS SCHEDULE 3: CHARGING STRUCTURE](#)
[Annex 1: Maximum Charging Threshold](#)
 - [4. DPS SCHEDULE 4: LETTER OF APPOINTMENT AND CONTRACT TERMS](#)
[Annex A](#)
[Annex B](#)
 - [5. DPS SCHEDULE 5: MI REPORTING TEMPLATE](#)
 - [6. DPS SCHEDULE 6: ANNUAL SELF-AUDIT CERTIFICATE](#)
 - [7. DPS SCHEDULE 7: COMMERCIALLY SENSITIVE INFORMATION – NOT USED](#)
 - [8. DPS SCHEDULE 8: DPS MANAGEMENT](#)
 - [9. DPS SCHEDULE 9: GUARANTEE](#)
 - [10. DPS SCHEDULE 10: VARIATION FORM](#)
 - [11. DPS SCHEDULE 11: PROCESSING, PERSONAL DATA AND DATA SUBJECTS](#)

1. THE APPOINTMENT

Parties:	The Minister for the Cabinet Office, represented by the Crown Commercial Service, 9th Floor, The Capital, Old Hall Street, Liverpool, L3 9PP (“ CCS ”)
	(the “ Supplier ”)
Appointment :	Subject to the terms of this DPS Agreement (RM6018), CCS appoints the Supplier, as a Supplier of Research services who can bid as part of a Call for Competition as outlined in Section 4 (How Services will be bought (Call for Competition Process)).
Appointment begins at:	‘Appointed’ date via the Sid4gov electronic platform (the “ Appointment Date ”)
Appointment expires at:	Four (4) years after the DPS Commencement date (the “ Expiry Date ”)

- 1.1 On 15/01/2018, Crown Commercial Service (CCS) placed a contract notice **2018/S 011-020894** in the Official Journal of the European Union (OJEU) seeking expressions of interest from bidders of research services to Customers under a Dynamic Purchasing System (DPS) arrangement.
- 1.2 On the basis of the Supplier’s response to the OJEU Contract Notice and their ‘Request to Participate’ in the RM6018 DPS for the provision of Research Services, CCS selected the Supplier to provide Services to Customers from time to time in accordance with this DPS Agreement. The Supplier is one of a number of suppliers appointed to this DPS Agreement.
- 1.3 This DPS Agreement sets out:
 - 1.4.1 how contracts will be awarded,
 - 1.4.2 the main terms and conditions for any Contract which Customers may agree under this DPS Agreement, and
 - 1.4.3 the obligations of the Parties during and after the Term of this DPS Agreement
- 1.4 The Parties agree there is no obligation for any Customer to place any Contracts under this DPS Agreement during the Term.
- 1.5 By electronically signing this DPS Agreement via the DPS Summary sign-off page on the electronic sid4gov platform, the Supplier agrees to comply with all the terms of this DPS Agreement.
- 1.6 CCS has paid one penny to the Supplier to legally form this DPS Agreement. The Supplier acknowledges this payment

2. SERVICES OFFERED

Services

2.1 Introduction and Background

- 2.1.1 The purpose of this Section 2 is to set out the scope of the Services that the Supplier is required to provide to CCS under this DPS Agreement and to provide a description of what the Services entail, together with any specific standards applicable to the Services.
- 2.1.2 The services and any standards set out in Part A (Specification) below will be defined in the Project Specification or each Contract under this DPS Agreement, by the Customer in accordance with the Call for Competition Process, which is in Section 4 of this DPS Agreement.
- 2.1.3 The Supplier shall deliver innovative, best practice research services to achieve Government and public sector goals.
- 2.1.4 The Supplier shall manage and deliver research projects, either by delivering services in-house or by Sub-Contracting.

2.2 Scope

- 2.2.1 The Supplier shall be required to deliver Services throughout the United Kingdom and may include international locations.
- 2.2.2 The Supplier shall ensure all Sub-Contracting arrangements comply with Section 12 of this DPS Agreement.

2.3 Customers

- 2.3.1 This DPS Agreement covers requirements across a wide and diverse Customer base - the Supplier shall support the varied requirements and budgets of all Customers irrespective of size.
- 2.3.2 Customers of this DPS Agreement shall be based throughout the United Kingdom and may include international locations.

2.4 Mandatory Requirements

- 2.4.1 For each Contract, the Customer will provide a Project Specification detailing what is required from the Supplier and the outcome to be achieved. The Supplier shall follow the Call for Competition Procedure under Clause 4.10.
- 2.4.2 The Supplier shall offer coverage on a national, regional and/ or local basis within the United Kingdom.

2.5 Customer Project Specifications

- 2.5.1 The Supplier shall adopt and accept a flexible approach to the management of the Project Specification and both electronic and paper based Project Specification shall be accepted.

2.6 Required Services

2.6.1 Account Management: The Supplier shall provide comprehensive account management services to the Customer. The Supplier shall:

- a) allocate specific named account teams for all Project(s) regardless of size;
- b) provide each Customer with an Account Manager (or equivalent level) Customer lead;
- c) follow the Call for Competition Process, in Section 4 (How Services will be bought (Call for Competition Process));
- d) have a clear and simple complaints/ issues escalation process for the Customers and Sub-Contractors;
- e) provide detailed, accurate and timely invoicing of all costs as outlined in DPS Schedule 3 (Charging Structure) of this DPS Agreement and any Contract.

2.6.2 Reporting and analysis: The Supplier shall provide reporting and analysis on all aspects of the Services being provided to the Customer, including:

- a) provide Management Information (MI) detailing work carried out by the Supplier on the basis of the billable charged hours as outlined in Section 4 (How Services will be bought (Call for Competition Process))
- b) related reporting as specified, to include measures on effectiveness and efficiency (these shall be outlined in each Project Specification)
- c) reporting to demonstrate progress and effectiveness (as defined by the Customer).

2.6.3 Not used.

2.6.4 The Supplier may be required to:

- a) work collaboratively on projects with other Customers and/or other Suppliers of this DPS Agreement, and
- b) manage multiple relationships with the Customer and Customer-related organisations at the Contract level to ensure greater value and best results for the Customer.

2.7 **NOT USED**

2.8 **Key Performance Indicators (KPIs)**

2.8.1 The KPIs listed below are how CCS will monitor and manage the Supplier's overall performance under the DPS Agreement.

2.8.2 CCS reserves the right to adjust, introduce new, or remove KPIs throughout the Term. However, any significant changes to KPIs shall be agreed between CCS and the Supplier in accordance with Section 11 (Variations to the DPS Agreement).

- 2.8.3 The Supplier shall comply with all its obligations related to KPIs set out in the DPS Agreement including Section 6 (Management Information and Management Levy) and shall meet the KPI Targets identified in the table below.
- 2.8.4 Without prejudice to any other rights or remedies arising under this DPS Agreement, including under Clause 9.2, if a Persistent Failure occurs, the Supplier acknowledges and agrees that CCS shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:
- a) CCS shall be entitled to require the Supplier, to prepare and provide to CCS, an Improvement Plan within ten (10) Working Days of a written request by CCS for an Improvement Plan. This Improvement Plan shall be subject to Approval and the Supplier will be required to implement any Approved Improvement Plan, as soon as reasonably practicable.
 - b) CCS shall be entitled to require the Supplier to attend, within a reasonable time 1 or more meetings at the request of CCS in order to resolve the issues raised by CCS in its notice to the Supplier requesting such meetings.
 - c) CCS shall be entitled to serve an Improvement Notice on the Supplier and the Supplier shall implement such requirements for improvement as set out in the Improvement Notice.
- 2.8.5 In the event that CCS has, in its absolute and sole discretion, invoked one or more of the remedies set out above and the Supplier:
- a) Fails to submit an Improvement Plan or attend a meeting;
 - b) fails to implement such requirements for improvement as set out in the Improvement Notice; or
 - c) fails to implement an Approved Improvement Plan;
- then (without prejudice to any other rights and remedies of termination provided for in this DPS Agreement), CCS shall be entitled to terminate this DPS Agreement for material Default.

Key Performance Indicator (KPI)	KPI Target	Measured by
1. DPS management		
1.1 Management Information (MI) returns: All MI returns to be returned to CCS by the 7th of each Month	100%	Confirmation of receipt and time of receipt by CCS (as evidenced within the MISO system)
1.2 All undisputed invoices to be paid within thirty (30) calendar days of issue	100%	Confirmation of receipt and time of receipt by CCS (as evidenced within the CCS finance system known as the CODA system)
1.3 Supplier self-audit certificate sent to CCS in accordance with the DPS Agreement	100%	Confirmation of receipt and time of receipt by CCS
1.4 Actions identified in an Audit Report to be delivered by the dates set out in the Audit Report	100%	Confirmation by CCS of completion of the actions by the dates identified in the Audit Report
1.5 Quality: upon request from CCS, further supporting evidence relating to the quality criteria to be provided within fifteen (15) working days of request	100%	Confirmation by CCS that satisfactory evidence has been provided.
2. Operational efficiency/price savings		
2.1 The Supplier to deliver against the Supplier Action Plan to derive further cost savings over the DPS Period via continuous improvement and innovation	100%	Confirmation by CCS of the cost savings achieved by the dates identified in the Supplier Action Plan
3. Demand management services		
3.1 The Supplier to deliver against the Supplier Action Plan to derive further cost savings over the DPS Period continuous improvement and innovation	100%	Confirmation by CCS of the cost savings achieved by the dates identified in the Supplier Action Plan
4. Customer satisfaction		
4.1 Services to be provided under Contracts to the satisfaction of Customers	80%	Confirmation by CCS of the Supplier's performance against customer satisfaction surveys

Part A – Specification

1. Specification

Our priorities

Crown Commercial Services (CCS) key priorities are to support visibility and control of research services whole life costs and to influence efficiencies through:

- Offering valued research solutions to meet customers individual requirements;
- Build and increase capacity of high quality research services outputs;
- Develop a dynamic commercial model for access to research services.

Scope

The Supplier shall provide research services as detailed in Annex A – Research Services Matrix of this Part A (Specification) of RM6018 Research Marketplace DPS Agreement.

The core requirement of the research services shall include but shall not be limited to provision of either one or a combination of services in each of the following four (4) distinct categories:

- Subject area(s)
- Research methods
- Specific participant group
- Research location

2. Mandatory Service requirements:

This section provides details of the mandatory requirements that all Suppliers shall be expected to fulfil to deliver the RM6018 Research Marketplace DPS Agreement.

Research Services

3.1. The Supplier shall offer either one or a combination of services from each of the four (4) distinct service categories as detailed in 3.1.1, 3.1.2, 3.1.3 and 3.1.4 below and as specified in Annex A - Research Services Matrix of this Part A (Specification), which further includes extensive sub-divided filters in addition to below:

3.1.1. Subject area(s):

- Social
- Sector
- Health
- Finance
- Communications
- Business

3.1.2. Research methods:

- Analysis
- Consultancy
- Evaluation
- Mystery
- Shopping
- Qualitative (face-to-face)
- Qualitative (online)
- Qualitative (services)
- Qualitative (specialist)
- Quantitative (specialist)
- Quantitative (telephone)
- Quantitative

3.1.3. Specific participant group:

- Economy
- Ethnicity
- Health
- Lifestage
- Professions
- Social
- Social-economic

3.1.4. Research location:

- UK
- British Overseas Territories
- Crown Dependencies
- Commonwealth
- EU
- International

Security

3.2. The Supplier shall be required to have their own security operating procedures that shall be made available to the CCS and/or Customers to provide assurance of data security.

3.3. The Supplier shall ensure that Customers' information and data (electronic and physical) shall be collected, held and maintained in a secure and confidential manner and in accordance with the Terms of the RM6018 DPS Agreement for any individual contracts awarded.

3.4. The Supplier shall ensure that all Supplier Personnel involved in the performance of any individual contracts awarded under this RM6018 DPS Agreement shall comply with all customer data security and confidentiality requirements.

- 3.5. The Supplier shall ensure appropriate security standards, controls and measures in place such as access to customer premises.
- 3.6. The Supplier shall provide secure premises for all individual contracts awarded under the RM6018 DPS Agreement which meet Customer individual security protocols.
- 3.7. The Supplier shall ensure that any suspected or actual security breaches are reported to the Customers' representative immediately.
- 3.8. The Supplier shall provide details of their personnel security procedures and upon request by Customers, details of all personnel that they intend to use in the delivery of the Services.
- 3.9. The Supplier shall ensure that Customers information and data is secured in a manner that complies with the Government Security Classification Policy rating. The Supplier shall ensure that the Government Security Classification Policy rating is also applied when information and data is transmitted across all applicable networks and/or in line with the Customers' requirements.
- 3.10. For further information, the Government Security Classification 2014 may be accessed here:
<https://www.gov.uk/government/publications/government-security-classifications>

Vetting

- 3.11. The Supplier shall where applicable provide details of its Supplier Personnel security procedures to customers and contact details of all Supplier Personnel who will be involved in the delivery of the Services, when requested by customers.

DPS Management

- 3.12. The Supplier shall comply with Schedule 8 (DPS Management) and the Key Performance Indicators as set out in clause 2.8 of RM6018 Research Marketplace DPS Agreement throughout the duration of the RM6018 DPS Agreement.
- 3.13. The Supplier shall comply with Schedule 3 (Charging Structure) and Annex 1 (Maximum Charging Threshold) of RM6018 Research Marketplace DPS Agreement throughout the duration of the RM6018 DPS Agreement, unless otherwise specified by the Customer at Call for Competition stage.

Social Value

- 3.14. The Supplier shall complete annual Corporate Social Responsibility (CSR) assessments upon request from Customers.
- 3.15. The Supplier shall identify Social Value options which are appropriate to Customers at Call for Competition stage. Any Social Value options selected by

Customer shall be in accordance with the Government's Social Values which are current at that point in time.

ANNEX A – Research Services Matrix



RM6018 - Research
Services Matrix.xlsx

3. DPS ARRANGEMENT AND AWARD PROCEDURE

Term of DPS Agreement

- 3.1 The DPS Agreement shall take effect on the Appointment Date and shall expire at the expiry date unless:
- 3.1.1 it is terminated earlier in accordance with the terms of this DPS Agreement or otherwise by the operation of Law; or
 - 3.1.2 CCS elects to decrease or extend the initial DPS Period in accordance Clause 3.2 and 3.3 below, in which ;
- 3.2 CCS may decrease the duration of this DPS Agreement at any time by giving the Supplier no less than three (3) Months written notice;
- 3.3 CCS may extend the duration of this DPS Agreement for any period or periods up to a maximum of twelve (12) Months in total from the expiry of the initial Dynamic Purchasing System Period by giving the Supplier no less than three (3) Months' written notice.
- 3.4 CCS acknowledges that the DPS will not be terminated within the initial first six (6) Months from the DPS commencement date.

Scope of DPS Agreement

- 3.5 This DPS Agreement governs the relationship between CCS and the Supplier in respect of the provision of the Services by the Supplier to Customers.
- 3.6 The DPS Agreement allows CCS and each Customer to order the Services from the Supplier in accordance with the Call for Competition Process.
- 3.7 The Supplier acknowledges that there is no obligation whatsoever on CCS or any Customer to invite or select the Supplier to provide any Services and/or to purchase any Services under this DPS Agreement.
- 3.8 No undertaking or any form of statement, promise, representation or obligation will be made or deemed to have been made by CCS or any Customer in respect of the total quantities or values of the Services to be ordered by them through this DPS Agreement. The Supplier acknowledges and agrees that it has not entered into this DPS Agreement on the basis of any such undertaking, statement, promise or representation and that no volume guarantee has been given by CCS or any other Customer.

Suppliers appointment

- 3.9 CCS hereby appoints the Supplier of the Services to Customers during the Term. This means the Supplier is eligible to be considered for the award of Contracts for the Services by Customers during the Term.
- 3.10 Where the Supplier comprises more than one entity acting as a consortium, each entity that is a member of the consortium shall be jointly and severally liable for performance of the Supplier's obligations under this DPS Agreement.

Non-exclusivity

- 3.11 The Supplier acknowledges that, notwithstanding the provisions of Clause 3.12, in entering into this DPS Agreement no form of exclusivity has been conferred on by CCS or any Customer in relation to the provision of the Services.
- 3.12 CCS and Customers are at all times entitled to enter into other contracts and agreements with other Suppliers for the provision of any or all Services which are the same as, or similar to, the Services.

How services will be ordered

- 3.13 If a Customer asks the Supplier to provide services which are the same as or similar to the Services, under the DPS Agreement, without following the Call for Competition Process, the Supplier shall inform the Customer of the existence of this DPS Agreement and the process they must follow to place an Order via the DPS Agreement.

Renewing or re-tendering existing contracts

- 3.14 If a Supplier is already providing (or is contracted to provide) Services to a Customer, and the Customer wants to procure related Services, the Supplier is required to provide the Customer with all reasonable information and assistance to help with the procurement of those related services. This is the case whether or not the Supplier is able to compete for the related services. The Supplier shall provide the relevant Customer and any Supplier bidding for the related services with all reasonable information and assistance to:
- 3.14.1 carry out appropriate due diligence with respect to the provision of the related services
 - 3.14.2 effect a smooth transfer and/or inter-operation between the existing contract and related services
 - 3.14.3 enable the Customer to carry out a fair Call for Competition Procedure for the related services, and
 - 3.14.4 enable the Customer and any Supplier bidding for the related services to make a proper risk assessment.
- 3.15 The Supplier shall respond consistently, fairly and without discrimination to requests for assistance from any Supplier bidding for the related services.

4. HOW SERVICES WILL BE BOUGHT (CALL FOR COMPETITION PROCESS)

Overview

- 4.1 This Section sets out the Call for Competition Process for all Customers and Suppliers to follow.
- 4.2 CCS reserves the right to change this Call for Competition Process.
- 4.3 All Customers listed under the OJEU Contract Notice may award a Contract under this DPS Agreement.
- 4.4 The Customer may appoint an agent to act on their behalf, this includes completing this Call for Competition Process.
- 4.5 CCS is not responsible for the actions of any Customer or it's Agents.

Customer reserves the right not to award

- 4.6 A Call for Competition Process may be cancelled at any time. The Customer is not obliged to award any Contract.
- 4.7 At any time during the Call for Competition Process, the Customer may go back to any previous stage in the process and amend requirements.
- 4.8 The Supplier may ask clarification questions relating to the Customer's requirements at any time during the Call for Competition stage. Questions and responses will be anonymised and made available to all Suppliers invited to the Call for Competition.

How services will be bought

- 4.9 The Customer shall award a Contract in accordance with the Call for Competition Procedure as set out in Clause 4.10 below.

4.10 Call for Competition Procedure

4.10.1 This procedure has a number of stages not all of which are mandatory, as detailed below:

4.10.2 Develop a Statement of Needs / initial Project Specification

4.10.3 Decide approach to selecting Suppliers

4.10.4 Participant workshops / Pre-competition engagement

4.10.5 Develop the Call for Competition Bid Pack

4.10.6 Issue a Call for Competition

4.10.7 Supplier Capability Assessment

4.10.8 Supplier clarification period / call

4.10.9 Written proposal

4.10.10 Evaluation of written proposal

4.10.11 Pitch presentation

4.11 Develop a Statement of Needs / initial Project Specification.

4.11.1 Where the Customer has identified a business need but is unsure how to procure it, the Customer may prepare a Statement of Needs in preparation for participant workshops.

4.11.2 Where the Customer has a mature understanding of its business needs, but requires market input for certain aspects, the Customer may develop an initial Project Specification. An initial Project Specification shall detail what is needed from the Potential Providers and the outcome that the Supplier shall be required to deliver. As a minimum the initial Project Specification shall include:

- I. an outline of the business challenge/issue, including any known targets
- II. details of any mandatory requirements, or specialist services that should be included
- III. a request for interested DPS Suppliers to respond
- IV. a clarification period for Potential Providers to ask questions about the Project Specification. The time frame for this clarification period shall be outlined in the Project Specification.

4.11.3 The Customer is advised but not mandated to include the below in the initial Project Specification.

- I. a budget range
- II. geographical location of work (if required)
- III. any security clearances needed
- IV. any other information that the Customer considers necessary to enable Potential Providers to submit a response.

4.12 Decide the approach to selecting Suppliers

4.12.1 Where the Customer has developed a Statement of Needs and requires a Supplier workshop, the Customer shall select Suppliers by selecting appropriate filter options detailed within the DPS.

4.12.2 Where the Customer has developed an initial Project Specification and requires a Pre-Competition Engagement event, the Customer shall select Suppliers by using the DPS filters to produce a shortlist of Suppliers on the DPS.

4.13 Supplier Workshops / Pre-Competition Engagement (optional).

4.13.1 The Customer shall issue invitations to those DPS Suppliers selected as described in 4.12 above.

4.13.2 An invitation to a **Supplier workshop** shall not imply that Suppliers shall be issued with any Call for Competition arising.

4.13.3 Suppliers invited to a **Pre-Competition Engagement** event shall be issued with any Call for Competition arising. This assumes such Potential Providers remain eligible to submit proposals at the time the Call for Competition is issued.

4.13.4 Following a pre-competition engagement event, the Customer may revise its initial Project Specification.

4.14 **Develop the Call for Competition Bid Pack**

4.14.1 The Customer shall prepare its Call for Competition Bid Pack following any Supplier workshops or pre-competition engagement event. The Call for Competition Bid Pack shall include:

- I. The Project Specification, inclusive of all mandatory elements (and any applicable advisory elements);
- II. Any applicable Terms of Participation;
- III. The Customers evaluation methodology including the weightings which shall apply;
- IV. Any additional Terms and Conditions the Customer requires in addition to those implied by the use of the DPS (which will not be material changes);
- V. Details of how Suppliers are to submit proposals. This may include registration details for electronic eSourcing platforms.
- VI. Details how suppliers are to submit costs. This may be via pre-set spreadsheets or templates.

4.15 **Call for Competition - Supplier Capability Assessment** (recommended but optional).

4.15.1 If a Customer chooses to undertake a Supplier capability assessment the Customer:

- I. shall send the Call for Competition Bid Pack to all selected Suppliers identified in accordance with 3.14.
- II. shall send questions relating to the requirements set out in the Project Specification to the selected Suppliers which require a “Yes” or “No” response (the “assessment questions”) and shall indicate the timeframe in which these must be completed.
- III. shall only proceed with suppliers that have responded ‘Yes’ to all the assessment questions to the next stage of the process.

4.15.2 Where a Customer chooses to undertake Supplier Capability Assessment the Supplier:

- I. shall respond to the Assessment Questions answering “Yes” or “No”.

- II. may be unable to proceed to the next Stage of process where they have failed to answer the assessment questions or provided a “No” response.

4.16 **Call for Competition – Stage One (required) and Stage Two (optional).**

4.16.1 The Customer shall undertake the written proposal stage for all Contracts under this DPS Agreement. The Customer:

- i. shall send the Call for Competition Bid Pack to all selected DPS Suppliers (or only those Suppliers who have passed through the capability assessment if the Customer has undertaken the capability assessment under clause 4.17)
- ii. shall score each DPS Suppliers proposal against the evaluation method and scoring system outlined in the Call for Competition Bid Pack.

4.16.2 During the undertaking of the written proposal stage the Supplier:

- i. shall submit their written proposal in line with the requirements in the Customer’s Call for Competition Bid Pack including timeframe and format.
- ii. shall be required to demonstrate how they will deliver the proposal, including whether the services will be delivered solely by their ‘in-house’ capability or whether they intend to Sub-Contract any element(s) of the Services delivering the proposal.
- iii. where the Supplier declares that it intends to Sub-Contract any element(s) of the Services, the Supplier shall be required to clearly state in its response:
 - a) The name of the Sub-Contractor(s);
 - b) The Companies House Registration number of the Sub-Contractor(s);
 - c) The registered address of the Sub-Contractor(s) and the address of the premises from where the services will be delivered ;
 - d) Details of the services that will be Sub-Contracted;
 - e) the estimated value of the work that will be Sub-Contracted.

4.16.3 A Customer can decide to evaluate the DPS Suppliers responses in two stages. If a two stage process is adopted then the Customer shall:

4.16.4 Stage one (written proposal) - If a Customer chooses to undertake a two stage process then at stage one the Customer shall:

- I. set out in the Call for Competition Bid Pack the evaluation method and scoring system to be used for stage one and stage two.

- II. Describe the process by which DPS Suppliers may progress to stage two, including any limitations on the number of DPS Suppliers which may progress.
- III. conduct a quality assessment of stage one proposal in line with the stage one evaluation method and scoring system outlined in the Call for Competition Bid Pack.
- IV. only proceed to Stage Two with those Suppliers invited to the Call for Competition who have been successfully evaluated in accordance with the evaluation method and scoring system outlined in the Call for Competition Bid Pack.

4.16.5 Where a Customer chooses to undertake stage one the DPS Supplier shall address the shortlisting requirements in its written proposal.

4.16.6 Stage Two (Presentation) If the Customer chooses to undertake a proposal presentation stage, the Customer shall:

- a) specify in the Call for Competition Bid Pack that the written proposal must be supported by a further submission in the form of:
 - i. a presentation;
 - ii. a face to face pitch; or
 - iii. such other submission as the Customer may specify,
- b) score the DPS Supplier further submission against the evaluation method and scoring system outlined in the Call for Competition Bid Pack, and

4.16.7 If the Customer chooses to undertake a presentation stage, the DPS Supplier shall provide the further submission in accordance with the requirements in the Customer's Project Specification.

4.16.8 The Customer shall ensure that the Call for Competition procedure used is proportionate to the complexity and value of the Customer's Project Specification.

4.16.9 The Customer shall award a Contract to the successful DPS Supplier in accordance with the methodology set out in the Call for Competition Bid Pack.

4.16.10 At all stages the Customer shall notify unsuccessful DPS Suppliers and shall provide the invited DPS Suppliers with feedback.

4.16.11 The DPS Supplier shall inform the Customer if at any stage it does not wish to participate in a participant workshop, pre-competition engagement or the Call for Competition.

4.17 Call for Competition Award Criteria

4.17.1 The Customer will evaluate the DPS Suppliers proposal against the following criteria to determine which of the DPS Suppliers provides the most economically advantageous proposal from the perspective of the Customer. For the avoidance of doubt the most economically advantageous proposal will not be the lowest price solution:

Criteria	Percentage Weightings
Quality	60% - 40%
Price	95% - 5%

4.17.2 Weightings and sub-weightings for the evaluation criteria will be set by the Customer and shall add up to 100%.

5. THE SUPPLIER'S OBLIGATIONS UNDER THE DPS

Warranties, representations and undertakings

- 5.1 The Supplier warrants, represents and undertakes to CCS and to each Customer all of the following:
- 5.1.1 it is validly incorporated and organised, and operates in accordance with the Laws of its place of incorporation;
 - 5.1.2 it has full capacity, authority and all necessary consents to enter into and to perform its obligations under this DPS Agreement and each Contract.
 - 5.1.3 this DPS Agreement has been electronically signed by a duly authorised representative of the Supplier;
 - 5.1.4 in entering into this DPS Agreement and any Contract it has not committed or agreed to commit any Fraud or Prohibited Act;
 - 5.1.5 all information, statements, warranties and representations contained in the 'Request to Participate' and any other document which resulted in the Supplier being 'appointed' on to the DPS are true, accurate, and not misleading;
 - 5.1.6 to the best of its knowledge, it is not facing any claim or going through any litigation, arbitration or administrative proceeding which will or might affect its ability to perform its obligations under this DPS Agreement and/or any Contract;

- 5.1.7 it is not subject to any contractual obligation or Law which is likely to have an adverse effect on its ability to perform its obligations under this DPS Agreement and/or any Contract;
- 5.1.8 it has notified CCS in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non-Compliance;
- 5.1.9 it is not affected by an Insolvency Event and no insolvency proceedings or other steps have been taken or to the best of its knowledge, are threatened
- 5.1.10 in the three (3) years prior to the date of this DPS Agreement (or, if the Supplier has been in existence for less than three (3) years, the whole of its existence) it has:
 - a) conducted all financial accounting and reporting activities in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts and
 - b) not performed any act or made any omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier's ability to fulfil its obligations under this DPS Agreement or any Contract.
- 5.2 The Supplier shall promptly notify CCS in writing:
 - 5.2.1 of any material detrimental change in the financial standing and/or credit rating of the Supplier
 - 5.2.2 if the Supplier undergoes a Change of Control, and
 - 5.2.3 provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned.
- 5.3 The Supplier is understood to repeat these warranties, representations and undertakings each time it enters into a Contract.
- 5.4 If at any time a Party becomes aware that a representation or warranty a Supplier has given under 5.1 has been breached, is untrue or is misleading, it shall immediately notify the other Party, and provide sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 5.5 The fact that any provision within this DPS Agreement is expressed as a warranty does not preclude CCS's right of termination if the Supplier breaches that provision.
- 5.6 The Supplier acknowledges and agrees that:
 - 5.6.1 the warranties, representations and undertakings contained in this DPS Agreement are material, and CCS has relied on those warranties, representations and undertakings when entering into this DPS Agreement, and
 - 5.6.2 any Customer entering into a Contract is also relying on the warranties, representations and undertakings made by the Supplier in this DPS Agreement each time it enters into a Contract.

Prevention of fraud and bribery

- 5.7 The Supplier shall ensure that no person acting on the Supplier's behalf commits any Prohibited Act in connection with this DPS Agreement.
- 5.8 If anyone acting on the Supplier's behalf does commit a Prohibited Act in connection with this DPS Agreement, CCS may terminate the DPS Agreement.
- 5.9 In such circumstances, the Supplier shall on demand compensate CCS in full from and against:
 - 5.9.1 the amount of value of any such gift, consideration or commission and
 - 5.9.2 any other Loss sustained by CCS in consequence of the Prohibited Act.
- 5.10 The Supplier shall:
 - 5.10.1 in relation to this DPS Agreement and each Contract, act in accordance with the Ministry of Justice Guidance on section 9 of Bribery Act 2010
 - 5.10.2 immediately notify CCS if it suspects or becomes aware of any Prohibited Act, unless such notification is contrary to Law; and
 - 5.10.3 respond promptly to any enquiries from CCS regarding any breach, potential breach or suspected breach of Clause 5.7.
- 5.11 The Supplier shall co-operate with any investigation in connection with the breach (or potential/suspected breach), and allow CCS to audit the Supplier's books, records and any other relevant documentation in connection with the breach. (Any such audit is in addition to the audits permitted under Clause 7.4).
- 5.12 The Parties agree that the Management Levy payable does not constitute an offence under section 1 of the Bribery Act 2010.

Supplier conflicts of interest

- 5.13 The Supplier shall not be in a position where there is a conflict, or a potential conflict, between its interests (or the interests of any affiliated company) and the duties owed to CCS and any Customer under this DPS Agreement or any Contract. Any breach of this Clause will be deemed to be a material Default.
- 5.14 A conflict of interest may occur where the Supplier or an affiliated company is bidding, or intends to bid, for the opportunity to deliver Services where the Supplier or an affiliated company has had involvement in the same or other related project that may give them an advantage. As soon as the Supplier recognises there is a risk of conflict, the Supplier shall:
 - 5.14.1 establish the necessary ethical wall arrangement(s) to eliminate it
 - 5.14.2 inform the Customer of the risk of conflict, and the arrangements the Supplier has made to eliminate it.
- 5.15 If a Supplier does not take these steps, CCS can immediately terminate this DPS Agreement, or instruct the Supplier to take such other steps as CCS deems necessary.

Such action by CCS does not prejudice or affect any right of action or remedy which has accrued, or accrues thereafter.

DPS Agreement performance

- 5.16 The Supplier shall perform all its obligations under this DPS Agreement and all Contracts entered into with Customers:
- 5.16.1 in accordance with the requirements of this DPS Agreement
 - 5.16.2 in accordance with the terms and conditions of the respective Contracts
 - 5.16.3 in accordance with Good Industry Practice
 - 5.16.4 with appropriately experienced, qualified and trained personnel with all due skill, care and diligence
 - 5.16.5 in compliance with all applicable Laws, and
 - 5.16.6 in compliance with all licences and authorisations.
- 5.17 If the Supplier identifies any conflict between any of the requirements above, it must inform CCS. The Supplier shall then comply with CCS's decision on the resolution of that conflict.

Non-discrimination

- 5.18 When performing its obligations under this DPS Agreement and any Contract, the Supplier shall not unlawfully discriminate either directly or indirectly on grounds of race, gender, religion or religious belief, colour, ethnic or national origin, disability, sexual orientation, age or otherwise. The Supplier is responsible for ensuring that Supplier Staff adhere to this rule.

6. MANAGEMENT LEVY AND MANAGEMENT INFORMATION

Management Levy

- 6.1 The Supplier agrees to pay CCS the 1% Management Levy on all Charges invoiced to Customers throughout the duration of this DPS Agreement.
- 6.2 CCS will send the Supplier Monthly invoices that set out the Management Levy due, based on the Management Information MI the Supplier has provided.
- 6.3 Unless agreed otherwise in writing, the Supplier shall pay the amount stated in any invoice submitted under Clause 6.2 by BACS, within thirty (30) calendar days of the date of issue of the invoice.
- 6.4 The Management Levy shall apply to the full Charges as specified in each and every Contract and shall not be varied as a result of any discount or any reduction in the Charges due to the application of any Service Credits (as defined in DPS Schedule 4, Part B (Contract Terms) and/or any other deductions made under any Contract.

- 6.5 The Management Levy is exclusive of VAT. The Supplier is required to pay VAT on the Management Levy at the rate and in the manner prescribed by Law.
- 6.6 Interest will be payable on any late payments of the Management Levy in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.7 The Supplier acknowledges and agrees that CCS may at any time during the Dynamic Purchasing System Period and upon serving two (2) Months' written notice, introduce a new electronic system to monitor spend through the DPS and collect the Management Levy (the "**system**") and upon receipt of the written notice the Supplier shall use its best endeavours to implement the system.
- 6.8 In the event that any new electronics system to monitor and collect the (MI) is introduced, CCS reserves the right to revert to a manual system to monitor and collect the Management Levy, upon providing two (2) Months' written notice to the Supplier.
- 6.9 CCS reserves the right to increase the Management Levy at any time after the first Contract Year. The Management Levy will not increase by:
 - 6.9.1 more than 0.5% in any one Contract Year;
 - 6.9.2 more than 1.5% in total over the DPS period.

Provision of management information

- 6.10 The Supplier shall provide accurate, timely and complete MI to CCS every Month on the Reporting Date during the Term and thereafter, until all transactions relating to Contracts have permanently ceased.
- 6.11 This section sets out what information is required and how it must be submitted.
- 6.12 The Supplier shall also provide such MI as may be required by a Customer in accordance with the terms of a Contract.
- 6.13 MI will be provided by the Supplier with no charge to CCS.
- 6.14 The Supplier shall maintain appropriate systems, processes and records to ensure that it can deliver the MI required by CCS in accordance with this Section.
- 6.15 The Supplier grants CCS a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to:
 - 6.15.1 use and to share with any Customer and/or Relevant Person, and/or
 - 6.15.2 publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted), any Management Information supplied to CCS for the purposes of the normal operational activities of the Authority and each Customer, including administering this DPS Agreement and/or all Contracts, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.
- 6.16 CCS shall in its absolute and sole discretion determine whether any MI is exempt from disclosure in accordance with the provisions of the FOIA.

Management information and format

- 6.17 The Supplier shall provide CCS with timely, accurate and complete MI Reports each Month on the Reporting Date using the MI Reporting Template. The MI Reporting Template is set out in Annex 1 of DPS Schedule 5 (MI Reporting).
- 6.18 The MI Report should refer to Project Specification(s) received, Order(s) received and invoices occurring during the Month to which the MI Report relates, regardless of when the work was actually completed. For example, if an invoice is raised for October but the work was actually completed in September, the invoice should be included in October's MI Report rather than September's.
- 6.19 The Supplier shall provide CCS with an MI Report for each Month, where the Supplier has been invited to respond to a Project Specification received an Order(s) or has an invoice to report that Month. Where the supplier has no business to report, the supplier shall submit a 'nil return.'
- 6.20 In addition, CCS may request that the Supplier provides similar MI in an anonymised format about any/ and or all other services supplied by the Supplier to Customers outside the DPS Agreement.
- 6.21 CCS may make changes to the MI Reporting Template, including to the data required or format of MI Reports. If it does, it will:
- 6.21.1 issue a replacement version of the MI Reporting Template to the Supplier
 - 6.21.2 give notice in writing of any such change to the MI Reporting Template, and specify the date from which the replacement MI Reporting Template must be used. This will be at least thirty (30) calendar days following the date of the notice.
- 6.22 The Supplier shall always provide MI Reports using the MI Reporting Template as detailed in Annex 1 of DPS Schedule 5 (MI Reporting).
- 6.23 The Supplier may not make any amendment to the current MI Reporting Template without Approval.
- 6.24 CCS may provide the Supplier with supplemental guidance for completing the MI Reporting Template. The Supplier agrees to complete each MI Reporting Template in accordance with any such guidance.

Submission of the Monthly MI Report

- 6.25 The MI Reporting Template must be completed electronically and uploaded to Management Information System Online (MISO). All other MI required must be returned to CCS as it instructs.
- 6.26 CCS reserves the right to specify that all or any part of an MI Report be submitted by the Supplier using an alternative means of communication to that specified in Clause 6.25, such as email. The Supplier agrees to comply with any such instructions provided they do not materially increase the burden on the Supplier.

- 6.27 If the Supplier has not reported invoices in MI for the year in question, the Supplier shall confirm that it has had no invoices or orders to report.

MI Failures and MI Defaults

- 6.28 The Supplier acknowledges that it is essential that CCS receives timely and accurate MI about this DPS Agreement, because this MI will be used by CSS and the Customers to inform strategic decision-making.
- 6.29 The Supplier shall inform CCS of any errors or corrections to the Management Information, either:
- 6.29.1 in the MI Report due on the Reporting Date immediately following discovery of the error by the Supplier; or
 - 6.29.2 as a result of CCS querying any data contained in an MI Report
- 6.30 Following an MI Failure, CCS may issue reminders to the Supplier or require the Supplier to rectify defects in the MI Report provided. The Supplier shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

Meetings

- 6.31 The Supplier agrees to attend meetings with CCS, at CCS's request, to discuss the circumstances of any MI Failure(s) (without prejudice to any other rights CCS may have). At such a meeting, the Supplier shall propose measures to ensure that the MI Failures are rectified and do not occur in the future. The Parties will document these measures and continue to monitor the Supplier's performance.

7. RECORD KEEPING, CONFIDENTIALITY AND TRANSPARENCY

Record keeping

- 7.1 The Supplier shall keep full and accurate records and accounts of the operation of this DPS Agreement for at least seven (7) years after the date of termination or expiry (whichever is the earlier) of this DPS Agreement or, if later, any Contract. This includes records and accounts of all Services provided under it, all Contracts entered into, any Services that have been sub-contracted out, and the amounts paid by each Customer.
- 7.2 The Supplier shall provide CCS with a completed Self-Audit Certificate, in the form set out in DPS Schedule 6 (Annual Self-Audit Certificate), in respect of each Contract Year of this DPS Agreement. In completing the Self-Audit Certificate, the Supplier shall confirm that it has reviewed a representative sample of Orders to provide assurance that:
- 7.2.1 all awards are clearly identified in the Supplier's order processing/ invoicing systems as Awards under the DPS
 - 7.2.2 where required, Awards are correctly reported in the MI returns

- 7.2.3 all related invoices are completely and accurately included in the MI returns, and
- 7.2.4 all Charges comply with DPS requirements on maximum mark-ups, discounts, charge rates, fixed quotes (as applicable).
- 7.3 Self-Audit Certificates must be completed by a responsible senior member of the Supplier's management team or by the Supplier's external auditor. The signatory must be professionally qualified in a relevant financial discipline.
- 7.4 At CCS's request, the Supplier shall allow CCS, any relevant Customer, the National Audit Office and/or auditor appointed by the Audit Commission ("Auditors") and their respective representatives access to the records and accounts referred to in Clause 7.1 at the Supplier's premises. It will also provide copies of such records and accounts as required by any of these organisations, to allow them to carry out an inspection to:
 - 7.4.1 verify the accuracy of Charges (and proposed or actual variations to them in accordance with this DPS Agreement)
 - 7.4.2 verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party Suppliers)
 - 7.4.3 review any books of accounts kept by the Supplier in connection with the provision of the Services
 - 7.4.4 verify the accuracy and completeness of the MI the Supplier has provided
 - 7.4.5 verify the Open Book Data
 - 7.4.6 ensure that the Supplier is complying with its obligations under this DPS Agreement and any Contract
 - 7.4.7 identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security. In these circumstances CCS is not obliged to inform the Supplier of the purpose or objective of its investigations
 - 7.4.8 review the integrity, confidentiality and security of the CCS Personal Data held or used by the Supplier
 - 7.4.9 review the Supplier's compliance with Data Protection Legislation
 - 7.4.10 obtain such information as is necessary to fulfil CCS's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General
 - 7.4.11 carry out CCS's own internal and statutory audits and to prepare, examine and/or certify CCS's annual and interim reports and accounts
 - 7.4.12 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 CCS has used its resources, and
 - 7.4.13 receive from the Supplier on request summaries of all central government public sector expenditure placed with the Supplier including through routes outside of the DPS. This is to verify that the Supplier's practice is consistent

with the Government's transparency agenda which requires all public sector bodies to publish details of expenditure on common goods and services.

- 7.5 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) on request during the Term and for a period of seven (7) years after expiry of the Term or any Contract, if later.
- 7.6 The Auditor will endeavour to ensure that the conduct of any Audit does not:
- 7.6.1 unreasonably disrupt the Supplier
 - 7.6.2 delay the provision of Services under any Contract.
- Insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of CCS.
- 7.7 The Supplier shall provide the Auditors with all reasonable co-operation and assistance, including by providing:
- 7.7.1 all information within the scope of the Audit requested by the Auditors
 - 7.7.2 reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Services (and/or ordered Services as appropriate), and
 - 7.7.3 reasonable access to the Supplier Staff.
- 7.8 If an Audit reveals that the Supplier has underpaid an amount equal to or greater than 1% of the Management Levy due in respect of any Monthly reporting and accounting period relating to this DPS Agreement and any Contracts, the Supplier shall reimburse CCS its reasonable costs incurred in relation to the Audit.
- 7.9 If an Audit reveals:
- 7.9.1 that the Supplier has underpaid an amount equal to or greater than 5% of the Management Levy due in respect of any Monthly reporting and accounting period relating to this DPS Agreement and any Contracts, or
 - 7.9.2 a material Default, or
 - 7.9.3 a Persistent Failure
- CCS may terminate this DPS Agreement. The Supplier shall also reimburse CCS its reasonable costs incurred in relation to the Audit.
- 7.10 The Parties agree that they will bear their own respective costs and expenses incurred during any Audit, save as specified in Clause 7.9.

Customer satisfaction monitoring

- 7.11 CCS may from time to time undertake (or procure the undertaking of) a "Customer Satisfaction Survey", to assess the level of satisfaction among some or all Customers with the Services. This may include:
- 7.11.1 the way in which the ordered Services are provided, performed and delivered;
 - 7.11.2 the quality, efficiency and effectiveness of the supply of the ordered Services;

- 7.11.3 Supplier compliance with this DPS Agreement and any Contracts, and;
 - 7.11.4 any other assessment CCS deems appropriate for monitoring Customer satisfaction.
- 7.12 CCS and the Customers are entitled, but not obliged, to use the results of any Customer Satisfaction Survey to inform the ongoing strategy for this DPS Agreement and any Contracts.

Confidentiality

- 7.13 All Parties shall respect the Confidential Information of each other, by:
- 7.13.1 treating it as confidential
 - 7.13.2 storing it securely
 - 7.13.3 not disclosing it, except as expressly set out in this DPS Agreement or without obtaining Approval
 - 7.13.4 not using or exploiting it in any way except for the purposes anticipated under this DPS Agreement.
- 7.14 Confidential Information shall include any information that is shared with the Supplier at any stage of the process as defined in Section 4 How Services will be bought.
- 7.15 The Supplier agrees to enter into any non-disclosure agreement required by a Customer as part of a Call for Competition Procedure where the terms of such non-disclosure agreement are reasonable.
- 7.16 For the purposes of Clauses 7.16 to 7.25 below, a Party which receives or obtains, directly or indirectly, Confidential Information is a "Recipient". A Party which discloses or makes available Confidential Information is a "Disclosing Party".
- 7.17 If a Recipient suspects or becomes aware of any unauthorised access, copying, use or disclosure of Confidential Information, it must notify the Disclosing Party immediately.
- 7.18 A Recipient is entitled to disclose Confidential Information:
- 7.18.1 where disclosure is required by applicable Law or by a court with the required jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
 - 7.18.2 if the Recipient already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;
 - 7.18.3 if the information was given to it by a third party without obligation of confidentiality;
 - 7.18.4 if the information was in the public domain at the time of the disclosure;
 - 7.18.5 if the information was independently developed without access to the Disclosing Party's Confidential Information;
 - 7.18.6 to its auditors or for the purposes of regulatory requirements;

- 7.18.7 on a confidential basis, to its professional advisers on a need-to-know basis; and/or
- 7.18.8 to the Serious Fraud Office where the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 7.19 If the Recipient is required by Law to disclose Confidential Information, it should notify the Disclosing Party as soon as reasonably practicable and to the extent permitted by Law. It should advise the Disclosing Party what Law and/or regulatory body requires such disclosure and what Confidential Information it will be required to disclose.
- 7.20 Subject to Clauses 7.17 and 7.18, the Supplier may disclose CCS Confidential Information, on a confidential basis, to:
- 7.20.1 Supplier Staff who are directly involved in the provision of the Services and need to know the Confidential Information to enable the performance of the Supplier's obligations under this DPS Agreement, and
- 7.20.2 its professional advisers for the purposes of obtaining advice in relation to this DPS Agreement.
- 7.21 Where the Supplier discloses CCS Confidential Information in such circumstances, it remains responsible for ensuring the persons to whom disclosure has been made comply with the confidentiality obligations set out in this DPS Agreement.
- 7.22 CCS may disclose Supplier Confidential Information:
- 7.22.1 to any Central Government Body or other Customer, on the basis that the information may only be further disclosed to Central Government Bodies or other Customers
- 7.22.2 to Parliament, including any Parliamentary committees, or if required by any British Parliamentary reporting requirement
- 7.22.3 if it deems disclosure necessary or appropriate in the course of carrying out its public functions
- 7.22.4 on a confidential basis to a professional adviser, consultant, Supplier or other person engaged by a Central Government Body or Customer, for any purpose relating to or connected with this DPS Agreement
- 7.22.5 on a confidential basis for the purpose of the exercise of its rights under this DPS Agreement, or
- 7.22.6 to a proposed transferee, assignee or novatee of, or successor in title to CCS.
- 7.23 Any references to disclosure on a confidential basis mean disclosure subject to a confidentiality agreement, or arrangement containing terms no less stringent than those placed on CCS under Clause 7.14.
- 7.24 The Confidential Information that CCS may disclose under Clause 7.21 includes any information relating to all Contracts, including service levels, pricing information (which includes information on prices tendered in a Call for Competition Procedure, even where such a Call for Competition Procedure does not result in the award of a

Contract). The terms of any Contract under this DPS Agreement may be shared with any Central Government Body or Other Customer.

- 7.25 Nothing in this Clause shall prevent a Recipient from using any techniques, ideas or Know-How which the Recipient has gained during the performance of this DPS Agreement in the course of its normal business, as long as this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 7.26 If the Supplier does not comply with these rules on Confidentiality, CCS can terminate this DPS Agreement.

Transparency

- 7.27 The Parties acknowledge and agree that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this DPS Agreement and any Transparency Reports under it is not Confidential Information and shall be made available in accordance with the procurement policy note 13/15 <https://www.gov.uk/government/publications/procurement-policy-note-1315-increasing-the-transparency-of-contract-information> and the Transparency Principles referred to therein.
- 7.28 CCS will determine whether any of the content of this DPS Agreement is exempt from disclosure in accordance with the provisions of the FOIA. CCS may consult with the Supplier to inform its decision regarding any redactions but will have the final decision in its absolute discretion.
- 7.29 The Supplier hereby gives its consent for CCS to publish this DPS Agreement in its entirety (subject only to redaction of any information that CCS determines is exempt from disclosure in accordance with the provisions of FOIA). This includes any agreed changes to this DPS Agreement.
- 7.30 NOT USED
- 7.31 NOT USED
- 7.32 NOT USED

Official Secrets Act

- 7.33 The Supplier shall comply with, and ensure Supplier Staff comply with the Official Secrets Acts 1911 to 1989 and section 182 of the Finance Act 1989.

Data Protection Act (DPA)

- 7.34 The Parties acknowledge that for the purposes of the Data Protection Legislation, CCS is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Schedule 11 (Processing, Personal Data and Data Subjects) by CCS and may not be determined by the Supplier.
- 7.35 The Supplier shall notify CCS immediately if it considers that any of CCS's instructions infringe the Data Protection Legislation.

- 7.36 The Supplier shall provide all reasonable assistance to CCS in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of CCS, include:
- 7.36.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 7.36.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 7.36.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 7.36.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 7.37 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 7.37.1 process that Personal Data only in accordance with DPS Schedule 11 ((Processing, Personal Data and Data Subjects), unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify CCS before processing the Personal Data unless prohibited by Law;
 - 7.37.2 ensure that it has in place Protective Measures, which have been reviewed and approved by CCS as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - 7.37.3 ensure that :
 - (i) the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in particular DPS Schedule 11 (Processing, Personal Data and Data Subjects));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (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 CCS or as otherwise permitted by this Agreement; and

- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 7.37.4 not transfer Personal Data outside of the EU unless the prior written consent of CCS has been obtained and the following conditions are fulfilled:
- (i) CCS or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by CCS;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier 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 CCS in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by CCS with respect to the processing of the Personal Data;
- 7.37.5 at the written direction of CCS, delete or return Personal Data (and any copies of it) to CCS on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.
- 7.38 Subject to Clause 7.39, the Supplier shall notify CCS immediately if it:
- 7.38.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 7.38.2 receives a request to rectify, block or erase any Personal Data;
 - 7.38.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 7.38.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 7.38.5 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
 - 7.38.6 becomes aware of a Data Loss Event.
- 7.39 The Supplier's obligation to notify under Clause 7.38 shall include the provision of further information to CCS in phases, as details become available.
- 7.40 Taking into account the nature of the processing, the Supplier shall provide CCS with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 7.38 (and insofar as possible within the timescales reasonably required by CCS) including by promptly providing:
- 7.40.1 CCS with full details and copies of the complaint, communication or request;

- 7.40.2 such assistance as is reasonably requested by CCS to enable CCS to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 7.40.3 CCS, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 7.40.4 assistance as requested by CCS following any Data Loss Event;
 - 7.40.5 assistance as requested by CCS with respect to any request from the Information Commissioner's Office, or any consultation by CCS with the Information Commissioner's Office.
- 7.41 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 7.41.1 CCS determines that the processing is not occasional;
 - 7.41.2 CCS determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 7.41.3 CCS determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 7.42 The Supplier shall allow for audits of its Data Processing activity by CCS or CCS's designated auditor.
- 7.43 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
- 7.44 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- 7.44.1 notify CCS in writing of the intended Sub-processor and processing;
 - 7.44.2 obtain the written consent of CCS;
 - 7.44.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 7.44 such that they apply to the Sub-processor; and
 - 7.44.4 provide CCS with such information regarding the Sub-processor as CCS may reasonably require.
- 7.45 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 7.46 The Supplier may, at any time on not less than 30 Working Days' notice, revise this clause 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 this Agreement).
- 7.47 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. CCS may on not less than 30 Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Freedom of Information Act (FOIA)

- 7.48 The Supplier acknowledges that CCS is subject to the requirements of the FOIA and the Environmental Information Regulations (EIR), and will assist and co-operate with CCS to enable CCS to comply with its Information disclosure obligations.
- 7.49 The Supplier shall, and will ensure its Sub-Contractors shall:
- 7.40.1 send all Requests for Information that it receives to CCS as soon as practicable, and within a maximum of two (2) Working Days from receipt
 - 7.40.2 provide CCS with a copy of all Information that is relevant to a Request for Information and in its control, possession or power, in the form that CCS requests within five (5) Working Days of the request, and
 - 7.40.3 provide all necessary assistance reasonably requested by CCS to enable it to respond to the Request for Information within the time allowed under section 10 of the FOIA or regulation 5 of the EIR.
- 7.50 CCS will be responsible for determining in its absolute discretion and notwithstanding any other provision in this DPS Agreement or any other agreement whether commercially sensitive information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
- 7.51 The Supplier shall not respond directly to a Request for Information without prior Approval.
- 7.52 The Supplier acknowledges that CCS may, acting in accordance with the Ministry of Justice Codes, be obliged under the FOIA or the EIR to disclose information concerning the Supplier or the Services without consulting the Supplier. However, CCS will take reasonable steps to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 7.53 The Supplier shall ensure that all Information is retained for disclosure in accordance with Clauses 7.1 to 7.10 (Records Keeping, Confidentiality and Transparency) and will permit CCS to inspect such records as requested.
- 7.54 NOT USED

Cyber essentials scheme condition

- 7.55 The Supplier shall provide CCS with a valid Cyber Essentials Scheme Basic Certificate, as a condition for the award of this DPS Agreement.
- 7.56 In the event of being 'appointed' to the DPS and prior to the execution of the Suppliers first Contract the Supplier shall provide CCS with a valid Cyber Essentials Scheme (Plus) Certificate.
- 7.57 Where the Supplier continues to process Cyber Essentials Scheme Data during the Term or the contract period of any Contract the Supplier shall deliver to CCS evidence of renewal of a valid Cyber Essentials Scheme Plus Certificate on each anniversary of the first applicable certificate obtained by the Supplier under Clause 7.48.

7.58 In the event that the Supplier fails to comply with Clauses 7.47 or 7.49, CCS reserves the right to terminate this DPS Agreement for material Default.

8. GENERAL GOVERNANCE

Publicity and marketing by CCS

- 8.1 CCS is entitled to publicise this DPS Agreement in accordance with any legal obligation upon it. This includes any examination of this DPS Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.
- 8.2 CCS may produce marketing materials to promote the DPS Agreement to Customers. To support this, CCS may require the Supplier to provide information. It will provide a template for the Supplier to complete, together with instructions for completion.
- 8.3 If the Supplier does not complete the template according to these instructions, CCS may exclude the Supplier from its marketing materials.

Publicity and marketing by Suppliers

- 8.4 If the Supplier wishes to publicise its participation in this DPS Agreement, it must obtain Approval from CCS. In particular, the Supplier shall obtain Approval before:
 - 8.4.1 making any media announcements regarding its participation in the DPS Agreement;
 - 8.4.2 publicising its participation in the DPS Agreement via social media;
 - 8.4.3 mentioning CCS or using the CCS brand in any promotion or marketing or announcement of Contracts.
 - 8.4.4 the Supplier must obtain Approval from the Customer when entering into any industry award or competition where a reference to a project or other piece of work completed under this DPS Agreement may form part of the Supplier's submission.
- 8.5 Any marketing materials produced by the Supplier in relation to this DPS Agreement must comply in all respects with the CCS Branding Guidance.
- 8.6 CCS will not unreasonably withhold or delay its Approval.
- 8.7 The Supplier shall not do anything or cause anything to be done which may damage the reputation of CCS, or bring CCS into disrepute.
- 8.8 The Supplier shall at all times during the Term on written demand fully indemnify CCS against all losses arising out of any claim or infringement resulting from the Supplier's use of CCS or any other Crown logo.

Promoting tax compliance

- 8.9 Clauses 8.10 to 8.11 apply only if the Charges payable under this DPS Agreement are or are likely to exceed five (£5,000,000.00) million during the Term.

- 8.10 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 8.10.1 notify CCS in writing within five (5) Working Days of its occurrence, and
 - 8.10.2 promptly provide to CCS details of how the Supplier is addressing this, along with any mitigating factors the Supplier considers relevant and any other information in relation to the Occasion of Tax Non-Compliance that CCS reasonably requires
- 8.11 If the Supplier fails to comply with Clause 8.10, CSS may terminate this DPS Agreement for material Default.

Value for money

- 8.12 The Supplier acknowledges that CCS wishes to ensure that the Services represent value for money to the taxpayer throughout the Term.

Continuous improvement

- 8.13 The Supplier shall put in place and follow a policy of continuous improvement related to the Services, which aims to:
- 8.13.1 improve the quality and efficiency of the Services
 - 8.13.2 identify new methods and technologies which could improve the Services, and
 - 8.13.3 monitor quality and cost of the Services.
- 8.14 CCS reserves the right to view this policy and the record of implementation.

9. DPS AGREEMENT TERMINATION AND SUSPENSION

Termination

- 9.1 To terminate the DPS Agreement for any reason, CCS must issue a Termination Notice to the Supplier, setting out the grounds for termination.

Termination for material Default

- 9.2 CCS may terminate this DPS Agreement for material Default at any time if:
- 9.2.1 A Customer terminates a Contract for the Supplier's breach of that Contract;
 - 9.2.2 the Supplier is in breach of Clause 5.7 to 5.12 (Prevention of Fraud and Bribery)
 - 9.2.3 the Supplier is in breach of Clause 5.13 or 5.14 (Conflicts of Interest)
 - 9.2.4 an Audit reveals that the Supplier has underpaid Management Levy by an amount equal to or greater than 5% of the amount due in accordance with Clause 7.9 (Records Keeping)
 - 9.2.5 the Supplier fails to comply with Clauses 7.13 to 7.26 (Confidentiality) and/or a Customer terminates a Contract for a breach by the Supplier of its confidentiality obligations under that Contract;

- 9.2.6 the Supplier breaches Clause 7.33 (Official Secrets Acts);
- 9.2.7 the Supplier is in breach of Clauses 7.47 to 7.50 (Cyber Essentials Scheme Condition);
- 9.2.8 where the Parties fail to agree a variation in accordance with Clause 11.2 (Variations to the DPS);
- 9.2.9 where the Supplier fails to comply with all applicable Law in connection with the performance of this DPS Agreement;
- 9.2.10 where an MI default occurs when the Supplier is invoicing Customers and not reporting MI;
- 9.2.11 a Persistent Failure occurs;
- 9.2.12 the Supplier commits a material Default of any of the following Clauses:
 - a) Clause 5.1 to 5.6 (Warranties, Representations and Undertakings)
 - b) Clause 5.16 and 5.17 (DPS Agreement Performance)
 - c) Clause 6.1 to 6.9 (Management Levy)
 - d) Clause 6.12 to 6.16 (Provision of Management Information)
 - e) Clause 7.1 to 7.10 (Record Keeping)
 - f) Clause 7.34 to 7.47 (Data Protection Act)
 - g) Clause 7.48 to 7.53 (Freedom of Information)
 - h) Clause 7.55 to 7.58 (Cyber Essentials Scheme Condition)
 - i) Clause 8.9 to 8.11 (Promoting Tax Compliance)
- 9.2.13 the representation and warranty given by the Supplier in relation to Occasions of Tax Non-Compliance in Clause 5.1.8 is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which are acceptable to CCS
- 9.2.14 the Supplier commits any material Default which is not, in the reasonable opinion of CCS, capable of remedy, and/or
- 9.2.15 the Supplier commits a Default, including a material Default, which in the opinion of CCS is capable of remedy, but the Supplier has not remedied such Default to the satisfaction of CCS within twenty (20) Working Days (or such other period as may be specified by CCS) from the date CCS sent a written notice of Default to the Supplier.

Termination in Relation to Guarantee

- 9.3 If CCS has required the Supplier to provide a DPS Guarantee under Section 13. (Guarantee), CCS may terminate the DPS Agreement if:
 - 9.3.1 the DPS Guarantor withdraws the DPS Guarantee
 - 9.3.2 the DPS Guarantor is in breach of, or is likely to breach the DPS Guarantee
 - 9.3.3 the DPS Guarantor experiences an Insolvency Event

- 9.3.4 the DPS Guarantee becomes invalid or unenforceable for any reason whatsoever, or
 - 9.3.5 the Supplier fails to provide the required Guarantee documentation by the date CCS specified.
- 9.4 Termination can be avoided if the DPS Guarantee is replaced by an alternative guarantee agreement acceptable to CCS.
- 9.5 If a Customer has required the Supplier to provide a Contract Guarantee under Section 13 (Guarantee), the Customer may terminate this DPS Agreement by issuing a Termination Notice to the Supplier if:
 - 9.5.1 the Contract Guarantor withdraws the Contract Guarantee;
 - 9.5.2 the Contract Guarantor is in breach of, or is likely to breach the Contract Guarantee;
 - 9.5.3 the Contract Guarantor experiences an Insolvency Event;
 - 9.5.4 the Contract Guarantee becomes invalid or unenforceable for any reason whatsoever;
 - 9.5.5 the Supplier fails to provide the required Guarantee documentation by the date specified by the Customer.
- 9.6 Termination can be avoided if the Contract Guarantee is replaced by an alternative guarantee agreement acceptable to the Customer.

Termination for Financial Standing

- 9.7 CCS may terminate this DPS Agreement if in its opinion, there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which has, or could reasonably be expected to have, an adverse impact on the Supplier's ability to supply the Services under this DPS Agreement or any Contract. Termination will be with effect from the date specified in the Termination Notice.

Termination on Insolvency

- 9.8 CCS may terminate this DPS Agreement with immediate effect if an Insolvency Event affecting the Supplier occurs.

Termination on Change of Control

- 9.9 CCS may terminate this DPS Agreement with immediate effect if it becomes aware that a Change of Control has occurred if it believes that such change is likely to have an adverse effect on the Supplier's ability to supply the Services.
- 9.10 CCS may not terminate this DPS Agreement on grounds of Change of Control where it granted Approval of the Change of Control before the Change of Control occurred.

Termination on Notice

- 9.11 CCS may terminate this DPS Agreement on any grounds by giving at least three (3) Months' written notice to the Supplier of termination with effect from a date specified in such notice.

Termination for breach of Regulations

- 9.12 CCS may terminate this DPS Agreement on the occurrence of any of the statutory provisions contained in Regulation 73(1)(a) to (c) of the Public Contract Regulations 2015.

Termination for continuing Force Majeure Event

- 9.13 Either Party may, by written notice to the other, terminate this DPS Agreement if a Force Majeure Event endures for a continuous period of more than ninety (90) Working Days.

Partial Termination

- 9.14 Wherever CCS is entitled to terminate this DPS Agreement for any of the reasons listed in 9.2 to 9.13 (inclusive), it may alternatively terminate the DPS Agreement in part only. This is only possible if the parts of this DPS Agreement not terminated can operate effectively without the terminated parts to deliver the intended purpose of this DPS Agreement.

Suspension of Supplier's appointment

- 9.15 If CCS believes that a material Default, Persistent Failure or Grave Misconduct has occurred, it may suspend the DPS Agreement with immediate effect.
- 9.16 CCS must do so in writing, and set out how long the suspension is for.
- 9.17 During any suspension period, the Supplier is not entitled to enter into any new Order.
- 9.18 However, suspension does not affect the Supplier's obligation to provide Services under any Contracts that were established prior to the suspension notice.

Consequences of termination and expiry

- 9.19 Even if the Supplier has received a Termination Notice this DPS Agreement, the Supplier shall continue to fulfil its obligations under this DPS Agreement until the date of expiry or termination of this DPS Agreement or such other date as required.
- 9.20 In particular, termination or expiry of this DPS Agreement will not result in automatic termination of any Contracts. The Supplier shall also continue to pay any Management Levy due to CCS in relation to such Contracts, even if the DPS Agreement has been terminated.
- 9.21 If CCS terminates the DPS Agreement for material Default and then makes other arrangements for the provision of the Services, CCS is entitled to recover from the Supplier the reasonable additional costs incurred in procuring, implementing and operating any alternative Services. CCS will make no further payments to the Supplier until CCS has established and recovered the final cost of making those other arrangements.

- 9.22 Within ten (10) Working Days of the date of termination or expiry of this DPS Agreement, the Supplier shall return to CCS any CCS Confidential Information in the Supplier's possession or control.
- 9.23 CCS is entitled to require access to data or information arising from the provision of the Services by the Supplier until the latest of (twelve) 12 Months following termination or expiry of this DPS Agreement, or three (3) Months following the date on which the Supplier ceases to provide Services under any Contract.
- 9.24 Termination or expiry of this DPS Agreement does not affect any rights, remedies or obligations of either Party accrued under this DPS Agreement prior to termination or expiry.

Severability

- 9.25 If any part of the DPS Agreement becomes invalid, illegal or unenforceable, it will be severed from the DPS Agreement and the remaining parts of the DPS Agreement or any Contract will be unaffected.
- 9.26 If any fundamental part of this DPS Agreement becomes invalid, CCS and the Supplier may agree to remedy the invalidity. If the Parties are not able to do so within twenty (20) working days of becoming aware of the invalidity, the DPS Agreement will be automatically terminated and each Party will be responsible for their own costs arising from the termination of the DPS Agreement.

What happens after termination?

- 9.27 The following Clauses and DPS Schedules, and all obligations placed on the Supplier through them, remain in force after termination or expiry of this DPS Agreement:
- 9.27.1 Section 2 (Services Offered)
 - 9.27.2 Clauses 3.4 to 3.7 (Scope of the DPS Agreement)
 - 9.27.3 Section 4 (How Services will be bought)
 - 9.27.4 Clauses 5.1 (Warranties, Representations and Undertakings) and 5.7 to 5.12 (Prevention of Bribery and Corruption)
 - 9.27.5 Clause 6.1 to 6.11 (Management Levy) and Clauses 6.12 to 6.18 (Provision of Management Information);
 - 9.27.6 Clauses 7.1 to 7.10 (Record Keeping), 7.2 to 7.31 (Transparency), 7.13 to 7.26 (Confidentiality), 7.32 (Official Secrets Acts), 7.34 to 7.39 (Data Protection Act) and 7.40 to 7.45 (Freedom of Information).
 - 9.27.7 Clauses 8.12 (Value for Money)
 - 9.27.8 Clause 9.27 (What happens after termination)
 - 9.27.9 Clauses 10.1 to 10.7 (Liability) and 10.8 to 10.15 (Insurance)
 - 9.27.10 Section 14 (Rights of Third Parties)
 - 9.27.11 Clauses 15.1 to 15.2 (Waiver and Cumulative Remedies) and 15.7 (Law and Jurisdiction) and;

9.27.12 Schedules 3 (Charging Structure), 6 (Self Audit Certificate), 7 (Commercially Sensitive Information), 8 (DPS Management).

10. INSURANCE AND LIABILITY

Liability

- 10.1 Neither Party excludes or limits its liability for:
- 10.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors or
 - 10.1.2 bribery, fraud or fraudulent misrepresentation by it or its employees or
 - 10.1.3 any liability to the extent it cannot be excluded or limited by Law.
- 10.2 Subject to Clause 10.1 each Party's total aggregate liability in respect of all Losses incurred under or in connection with this DPS Agreement as a result of Defaults or CCS Cause shall not exceed:
- 10.2.1 If a Default or CCS Cause occurs within the first Contract Year, £100,000
 - 10.2.2 If a Default or CCS Cause occurs in any subsequent Contract Year (following the end of the first Contract Year) that commences during the remainder of the Term, the higher of £100,000 in each Contract Year or a sum equal to 125% of the Management Levy payable by the Supplier in the previous Contract Year.
 - 10.2.3 If a Default or CCS Cause occurs after the end of the Term, in each twelve (12) Month period commencing on the anniversary of the Appointment Date after the end of the Term the higher of £100,000 or a sum equal to 125% of the Management Levy payable by the Supplier under this DPS Agreement in the last Contract Year that commenced during the Term.
- 10.3 There are no limits to the Supplier's liability in relation to the obligation to pay any Management Levy's which are due and payable to CCS.
- 10.4 Subject to Clauses 10.1 and 10.5, neither Party will be liable to the other in any situation for any:
- 10.4.1 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect); and/or
 - 10.4.2 any indirect, special or consequential loss or damage.
- 10.5 Subject to Clause 10.2, the Supplier shall be liable for the following types of direct loss, damage, cost or expense (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by CCS), all of which are recoverable by CCS:
- 10.5.1 the additional operational and/or administrative costs and expenses arising from any material Default
 - 10.5.2 any Management Levy due and payable to CCS
 - 10.5.3 any wasted expenditure or charges

- 10.5.4 any compensation or interest paid to a third party by CCS
 - 10.5.5 the additional cost of procuring, implementing and operating any alternative or replacement services to the Services, and
 - 10.5.6 any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Laws.
- 10.6 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising under this DPS Agreement.
- 10.7 For the avoidance of doubt, the Parties acknowledge and agree that Clause 10.1 to 10.5 shall not limit the Supplier's liability to a Customer under any Contract and the Supplier's liability under a Contract shall be as provided for in that Contract only.

Insurance

- 10.8 The Supplier shall hold and maintain the following insurances in relation to the performance of its obligations under this DPS Agreement and any Contract:
- 10.8.1 public liability insurance to cover all risks in the performance of this DPS Agreement and any Contract, with a minimum limit of one (£1,000,000.00) million for each individual claim
 - 10.8.2 employers' liability insurance with a minimum limit of indemnity as required by Law
 - 10.8.3 professional indemnity insurance adequate to cover all risks in the performance of this DPS Agreement and any Contract with a minimum limit of indemnity of one (£1,000,000.00) million for each individual claim.
- 10.9 Customers are entitled to require the Supplier to put in place a higher limit of indemnity and/or such other insurances as are relevant to their requirements under a Contract. Such additional insurance requirements must be specified included in the relevant Project Specification.
- 10.10 The Insurances referred to in Clause 10.8 must be maintained with a reputable insurance company, on terms that are no less favourable to those generally available to a prudent Supplier in respect of risks insured in the international insurance market.
- 10.11 The Supplier is solely responsible for paying any excess or deductibles under the insurances referred to in Clause 10.8.
- 10.12 The terms of any insurance or the amount of cover do not relieve the Supplier of any liabilities arising under this DPS Agreement or any Contract.
- 10.13 The Supplier shall provide CCS on request with copies of all insurance policies referred to in Clause 10.8 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 10.14 If the Supplier fails to maintain the insurances required by this DPS Agreement, then CCS may make alternative arrangements to protect its interests. It may recover the premium and other costs of such arrangements as a debt due from the Supplier.

10.15 The Supplier shall maintain the insurances referred to in Clause 10.8 in full effect from the Appointment Date until six (6) years after the expiration or earlier termination of this DPS Agreement (or such longer term as CCS requires). The Supplier shall use its reasonable endeavours to ensure that it does not by its acts or omissions cause any insurance policy to be invalidated or voided.

Force majeure

10.16 A “Force Majeure Event” means anything affecting either Party’s performance of their obligations arising from any of the following:

10.16.1 acts, events, omissions, happenings or non--happenings beyond the reasonable control of the affected Party

10.16.2 riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare

10.16.3 fire, flood, any disaster and any failure or shortage of power or fuel

10.16.4 an industrial dispute affecting a third party for which a substitute third party is not reasonably available

10.17 The following do not constitute a Force Majeure Event:

10.17.1 any industrial dispute relating to the Supplier, its staff, or any other failure in the Supplier’s (or a subcontractor’s) supply chain

10.17.2 any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned.

10.18 If a Force Majeure Event continues for sixty (60) Working Days, the Party not affected by the Force Majeure Event can suspend or terminate this DPS Agreement. They must do so in writing, and state the date from which the suspension or termination will come into effect.

11. VARIATIONS TO THE DPS AGREEMENT

11.1 Subject to Clause 11.3 and DPS Schedule 3 (Charging Structure), this DPS Agreement can only be varied if:

11.1.1 CCS notifies the Supplier in writing that it wishes to vary the terms of this DPS Agreement and provides the Supplier with full written details of any such proposed change by completing, signing and sending the Variation Form as set out in DPS Schedule 10 (Variation Form), and

11.1.2 the completed Variation Form is signed by the CCS Representative and the Supplier Representative.

11.2 If no variation agreement is reached within thirty (30) Working Days of CCS notifying the Supplier that it wishes to vary the terms, CCS may give written notice to the Supplier that either:

11.2.1 the Parties will continue to perform their obligations under this DPS Agreement without the variation, or

11.2.2 the DPS Agreement will be terminated with immediate effect.

Legislative Change

- 11.3 The Supplier shall neither be relieved of its obligations under this DPS Agreement nor entitled to increase the DPS Prices and/or the Charges as the result of:
- 11.3.1 a General Change in Law, or
 - 11.3.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Appointment Date.
- 11.4 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in Clause 11.3.2), the Supplier shall notify CCS of the likely effects of that change, including whether any change is required to the Services, the Contract Prices or this DPS Agreement.
- 11.5 As soon as practicable after any notification in accordance with Clause 11.4, the Parties will discuss and agree the matters referred to in that Clause and any ways in which the Supplier can mitigate the effect of the Specific Change of Law, and the Supplier shall:
- 11.5.1 provide evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors
 - 11.5.2 demonstrate that the Supplier had taken into account a foreseeable Specific Change in Law before it occurred, and/or
 - 11.5.3 give evidence about how the Specific Change in Law has affected the cost of providing the Services (or ordered Services, as appropriate).
- 11.6 Any increase in the DPS Prices, or relief from the Supplier's obligations agreed by the Parties following discussions under 11.5, will be implemented by a written variation agreement signed by the CCS Representative and the Supplier's Representative. The variation agreement will only apply to Contracts signed after the date of the increase.

12. TRANSFER AND SUB-CONTRACTING

Transfer

- 12.1 This DPS Agreement is between CCS and the Supplier only. The Supplier is not allowed to assign, novate or otherwise dispose of any rights and obligations under this DPS Agreement without the prior Approval of CCS.
- 12.2 CCS may:
- 12.2.1 assign, novate or otherwise dispose of its rights and obligations under this DPS Agreement to any other Customer or
 - 12.2.2 novate this DPS Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by CCS, provided that such assignment, novation or disposals

shall not increase the burden of the Supplier's obligations under this DPS Agreement.

- 12.3 The Supplier shall enter into such agreement and/or deed as CCS reasonably requires to give effect to any such assignment, novation or disposal.

Sub-contracting

- 12.4 Notwithstanding the provisions of Clause 12.1, the Supplier is entitled to sub-contract its obligations to supply the Services. The Supplier shall ensure that terms are included in any Sub-Contract which require the Supplier to pay any undisputed sum due to the relevant Sub-Contractors within thirty (30) calendar days of receiving the Sub-Contractor's invoice.
- 12.5 The Supplier shall put in place and maintain throughout the Term robust systems and procedures for the management of Sub-Contractors utilised by the Supplier in relation to the DPS Agreement. It is responsible for ensuring that the work carried out by such Sub-Contractor is delivered in the manner and to the standard required by this DPS Agreement and any Contract. The Supplier's management systems must include effective monitoring of service delivery and price management.
- 12.6 The Supplier may not substitute or remove a Key Sub-Contractor or appoint an additional Key Sub-Contractor without the prior Approval of CCS. CCS will not unreasonably withhold or delay such Approval.
- 12.7 Even when using Sub-Contractors, the Supplier remains responsible for the provision of the ordered Services at all times. The Supplier is also responsible for all acts and omissions of its Sub-Contractors, and the acts and omissions of those employed or engaged by the Sub-Contractors, as if they were its own. Any obligation on the Supplier under this DPS Agreement applies equally to its Sub-Contractors.
- 12.8 CCS may require the Supplier to terminate a Sub-Contract if it considers that:
- 12.8.1 the Sub-Contractor may prejudice the provision of the Services or may be acting contrary to the interests of CCS
 - 12.8.2 the Sub-Contractor is considered to be unreliable and/or has not provided reasonable services to its other customers, and/or
 - 12.8.3 the Sub-Contractor employs unfit persons.
- 12.9 CCS requires the Supplier to terminate a Sub-Contract under Clause 12.8, the Supplier remains responsible for maintaining the provision of the Services.

13. GUARANTEES

- 13.1 Where CCS has notified the Supplier that the award of this DPS Agreement is conditional upon receipt of a valid DPS Guarantee, then the Supplier shall provide CCS with:
- 13.1.1 an executed DPS Guarantee from a DPS Guarantor and

- 13.1.2 a certified copy extract of the board minutes and/or resolution of the DPS Guarantor approving the execution of the DPS Guarantee.
- 13.2 This Guarantee must be provided before the DPS Agreement can be formally awarded.
- 13.3 Where a Customer has notified the Supplier that it will only award a Contract if it receives a valid Contract Guarantee, then before the Contract can be awarded, the Supplier shall provide the Customer with:
 - 13.3.1 an executed Contract Guarantee from a Contract Guarantor; and
 - 13.3.2 a certified copy extract of the board minutes and/or resolution of the Contract Guarantor approving the execution of the Contract Guarantee.

14. RIGHTS OF THIRD PARTIES

- 14.1 The provisions of Section 4 (How Services will be bought (Contract Process)), Clause 5.1 (Warranties, representations and undertakings), Clause 7.11 to 7.12 (Customer Satisfaction Monitoring), Clause 7.13 to 7.26 (Confidentiality), Clause 9.25 to 9.26 (Severability), Clause 9.27 (What happens after Termination), Clause 10.8 to 10.15 (Insurance) and confer benefits on persons named in such provisions other than the Parties (each such person a “Third Party Beneficiary”) and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 14.2 Subject to Clause 14.1, a person who is not Party to this DPS Agreement (a “Third Party”) has no right to enforce any term of this DPS Agreement under the Contracts (Rights of Third Parties) Act 1999. This does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 14.3 Each Customer may, with Approval, enforce as a Third Party Beneficiary:
 - 14.3.1 any of the provisions specified in Clause 14.1 insofar as they are for the benefit of the Customer, and
 - 14.3.2 any other term of this DPS Agreement which is for the benefit of the Customer.
- 14.4 CCS may act as Agent and trustee for each Customer and:
 - 14.4.1 enforce on behalf of that Customer any Clause or term that is referred to in Clause 14.1
 - 14.4.2 and/or recover any loss, damage or liability suffered by that Customer in connection with a breach of any such Clause or term.
- 14.5 No consent of any Third Party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this DPS Agreement or any one or more Clauses of it.

15. OTHER PROVISIONS

Waiver and cumulative remedies

- 15.1 The rights and remedies under this DPS Agreement may be waived only by notice in accordance with Clause 15.8 (Notices). Such notice must expressly state that a waiver

is intended. A failure or a delay by a Party in exercising a right or remedy provided under this DPS Agreement or by Law does not constitute a waiver of that right or remedy, nor does it prevent or restrict the further exercise of that right or remedy.

- 15.2 The rights and remedies provided by this DPS Agreement are cumulative and, unless otherwise provided in this DPS Agreement, are not exclusive of any right or remedies provided at Law or in equity or otherwise under this DPS Agreement.

Relationship to the parties

- 15.3 Nothing in this DPS Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party, or to authorise either Party to act as agent for the other Party. Neither Party shall have authority to make representations, act in the name of, or on behalf of, or otherwise to bind the other Party.

Further assurances

- 15.4 Each Party agrees that, at the other's request and (where necessary) cost, it will complete all relevant tasks and documentation needed to maintain this DPS Agreement.

Entire agreement

- 15.5 This DPS Agreement is the entire agreement between the Parties. In entering this DPS Agreement, each Party relies entirely on the undertakings made within it.

DPS agreement management

- 15.6 The Parties agree that this DPS Agreement shall be managed in accordance with Schedule 8 (DPS Management).

Law and jurisdiction

- 15.7 This DPS Agreement, any Contract and any non-contractual obligations associated with these will be governed by the Laws of England and Wales and the Parties will adhere to the jurisdiction of the courts of England and Wales.

Notices

- 15.8 Notices may be served under this DPS Agreement in person, by post or by email. The table below sets out deemed time of delivery and proof of service for each.

Notice delivered	Deemed time of delivery	Proof of service
In person	At the time of delivery	Proof that delivery was made (eg a signature is obtained)
By first class post, special delivery or other recorded delivery	Two (2) Working Days from the date of posting	Proof that the envelope was addressed and delivered into the custody of the postal authorities

Email	09:00 hours on the first Working Day after sending	Dispatched in an emailed pdf to the correct email address without any error message
-------	--	---

15.9 The following addresses are to be used for delivering Notices:

Crown Commercial Service
9th Floor
The Capital
Old Hall Street
Liverpool
L3 9PP

For the attention of: Strategic Category Director, Marketing Communications Category
Tel: 0345 410 2222

Email:
[x]

The Supplier

(Supplier contact details as detailed within the Suppliers Selection Questionnaire (SQ) contained within the RM6018 Research Marketplace DPS).

15.10 Either Party may change its address for service by serving a notice on the other Party in writing.

15.11 For the avoidance of doubt, an email is accepted as being 'in writing'.

16. INTELLECTUAL PROPERTY RIGHT AND INDEMNITY

16.1 Other than as set out in this DPS Agreement or any Contract, neither CCS, a Customer nor the Supplier shall acquire any right, title or interest in the other's Intellectual Property Rights (IPR).

16.2 Where either Party acquires by Law, title to IPR that is inconsistent with the allocation of title set out in Clause 16.1, it shall assign in writing such IPR as it has acquired to the other party on request.

16.3 The Supplier shall ensure and procure that the availability, provision and use of the Services and the performance of the Supplier's obligations under this DPS Agreement shall not infringe any IPR or any third party.

16.4 The Supplier warrants that it owns, or has obtained, valid licences for all IPR that are necessary to perform its obligations under this DPS Agreement and any Contract, other than any IPR provided to it by the Customer. The Supplier shall maintain these licences in full during the Term of this DPS Agreement and the term of all Contracts.

16.5 The Supplier shall not use CCS' name, logos or trademarks on any of its products or services without Approval.

16.6 During and after the Term of this DPS Agreement, the Supplier shall indemnify, and keep indemnified, CCS in full from and against all claims, demands and other losses and any other liabilities in respect of any infringement of any Intellectual Property Right related to its provision of Services.

17. COMPLAINTS HANDLING AND RESOLUTION

17.1 If either Party receives a Complaint from a Customer which it cannot resolve within five (5) Working Days, it must notify the other Party. If the Supplier has received the complaint, it must provide in the notice full details of the Supplier's plans to resolve the Complaint.

17.2 The Supplier shall work to resolve the Complaint within ten (10) Working Days.

17.3 At the request of CCS or the Customer, the Supplier shall, within two (2) working days, provide CCS or the Customer with full details of a Complaint, including details of steps taken to resolve it.

Dispute resolution

17.4 If any dispute arises between the Parties in connection with this DPS Agreement, they must try to settle it within twenty (20) Working Days of either Party notifying the other of the dispute. This should include escalating the dispute to the CCS Representative and the Supplier Representative if necessary.

17.5 Nothing in this dispute resolution procedure will prevent the Parties from seeking an interim court order restraining the other Party from doing any act or compelling the other Party to do any act.

17.6 The obligations of the Parties under this DPS Agreement will not be suspended, cease or be delayed during a dispute.

17.7 If the dispute cannot be resolved by the Parties within twenty (20) Working Days, they must refer it to mediation, unless CCS considers that the dispute is not suitable for resolution by mediation.

17.8 If a dispute is referred to mediation, the Parties must:

17.8.1 appoint a neutral adviser or mediator (the "Mediator"). Ideally, Parties will agree on this appointment, but if they are unable to agree upon a Mediator within ten (10) Working Days of the proposal to appoint a mediator, or the chosen Mediator is unable or unwilling to act, either Party must apply to the Centre for Effective Dispute Resolution to appoint a Mediator

17.8.2 meet with the Mediator within ten (10) Working Days of the appointment, to agree how negotiations will take place and relevant information will be exchanged.

17.9 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

17.10 If the Parties reach a resolution, a written agreement will be produced for both Parties to sign. Once signed, this agreement will be binding on both Parties.

- 17.11 If the Parties fail to reach a resolution, either Party may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion will be provided without prejudice and cannot be used in evidence in any proceedings relating to this DPS Agreement without the prior written consent of both Parties.
- 17.12 If the Parties fail to reach a resolution within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then the dispute may be referred to arbitration, unless CCS considers that it is not suitable for resolution by arbitration.
- 17.13 If a dispute is referred to arbitration, the Parties must comply with the following provisions:
- 17.13.1 the arbitration will be governed by the provisions of the Arbitration Act 1996
 - 17.13.2 the London Court of International Arbitration (LCIA) procedural rules will apply, and are deemed to be incorporated into this DPS Agreement (although if there is any conflict between those rules and this DPS Agreement, this DPS Agreement will prevail)
 - 17.13.3 the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules)
 - 17.13.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties
 - 17.13.5 if the Parties fail to agree on the appointment of the arbitrator within ten (10) Working Days or, if the person appointed is unable or unwilling to act, LCIA will appoint an arbitrator, and
 - 17.13.6 the arbitration proceedings shall take place in London.

DPS SCHEDULE 1: DEFINITIONS AND INTERPRETATION

1. DEFINED TERMS

1.1 In this DPS Agreement, the following expressions and defined terms have the following meanings:

Account Management	Management of the relationship The overarching management, both day to day and long term of every aspect of the project/campaign including, but not limited to, the working relationship between Supplier personnel and Customer personnel, management of the budget, deliverables under a Contract, subcontractors and other Customer suppliers.
Agreement	Means this Contract;
Approval	The prior written consent of CCS.
Audit	An audit carried out under Clause 7.1 to 7.10 (Record Keeping, Confidentiality and Transparency).
Audit Report	A report summarising the testing completed and the actions arising following an Audit.
Account Manager	A Account Manager who will take responsibility for managing the relationship between the Supplier, Customers and CCS.
Branding Guidance	The Supplier marketing toolkit which includes logos and guidance provided by CCS to the Supplier.
Project Specification	The document issued by a Customer as part of the Call for Competition Process containing the information set out in Clause 4.10.1 of Section 4 (How Services will be bought (Call for Competition Process)).
Call for Competition Award Criteria	The award criteria set out in Clause 4.10.11 of Section 4. How Services will be bought (Call for Competition Process).
Call for Competition Bid Pack	The complete suite of procurement documents Suppliers need to submit their response to a Call for Competition. This will include the Project Specification, any terms of participation, response guidance and proposed contract

	Terms and Conditions in addition to DPS Terms and Conditions.
Call for Competition Procedure	The process for a Customer issuing a Project Specification and a DPS Supplier submitting a Proposal set out in Clause 4.10 of Section 4. How Services will be bought (Call for Competition Process).
Call for Competition Process	The Process for awarding a Contract set out in Section 4 (How Services will be bought (Call for Competition Process)).
CCS Cause	Any breach of the DPS Agreement by CCS, for which CCS is liable to the Supplier. This includes, but is not limited to breach of a fundamental term, omission, misrepresentation, negligence or negligent statement in relation to this DPS Agreement.
CCS Confidential Information	All CCS Personal Data and any information however it is conveyed that relates to the business, affairs, developments, trade secrets, Know-How, IPR, personnel and suppliers of CCS and/or Customers that is designated as being confidential, or which ought reasonably be considered to be confidential (whether or not it is marked “confidential”).
CCS Personal Data	Any personal data supplied by CCS to the Supplier in connection with this DPS Agreement. “Personal data” has the same meaning as set out in the Data Protection Act 2018.
CCS Representative	The representative appointed by CCS in relation to this DPS Agreement.
Central Government Body	A body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: Government Department; Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); Non-Ministerial Department; or Executive Supplier.
Change in Law	Any change in Law which comes into force after the Appointment Date and impacts, or might impact, the

	supply of the Services and ability to meet the Contract Terms.
Change of Control	A change in the ownership or control of an Supplier, as defined in section 450 of the Corporation Tax Act 2010.
Charges	The charges payable to the Supplier by the Buyer under any Contract in consideration of the full and proper performance by the Supplier of the Supplier's obligations under the Contract calculated in a manner that is consistent with the Charging Structure as set out in DPS Schedule 3 (Charging Structure).
Charging Structure	The way Charges are to be calculated for each Contract. The structure is set out in DPS Schedule 3 (Charging Structure).
Contract Guarantee	A deed of guarantee in favour of a Customer in the form set out in DPS Schedule 9 (Guarantee).
Comparable Supply	The supply of services to another customer of the Supplier that are the same or similar to the Services.
Complaint	A formal written complaint raised by a Customer in relation to the performance of this DPS Agreement or any Contract. Complaints must be raised in accordance with Clauses 17.1 to 17.3 (Complaints Handling and Resolution).
Confidential Information	The CCS Confidential Information, any Customer's confidential information and/or the Supplier Confidential Information.
Contract	The legally binding agreement (entered into following the provisions of this DPS Agreement) for the provision of Services made between a Customer and the Supplier which includes the Letter of Appointment, terms and conditions substantially in the form of the Contract Terms, any Statements of Work and any other documents expressly incorporated into that document in accordance with its terms.
Contractor Personnel	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement.

Contract Terms	The terms and conditions in Part 2 of DPS Schedule 4 (Letter of Appointment and Contract Terms).
Contract Year	A consecutive twelve (12) Month period during the Term commencing on the Appointment Date or each anniversary thereof.
Control	As defined in sections 1124 and 450 of the Corporation Tax Act 2010.
Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer	Is the meaning given in GDPR,
Crown	The government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or Suppliers from time to time carrying out functions on its behalf.
Customer	Means the bodies listed in the OJEU Notice who can make an Order and enter into a Contract under this DPS Agreement.
Cyber Essentials Scheme	The Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats. Details of the Cyber Essentials Scheme can be found here: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview .
Cyber Essentials Scheme Basic Certificate	The certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance.
Cyber Essentials Scheme Data	Sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme.
Cyber Essentials Scheme Plus Certificate	The certification awarded on the basis of external testing by an independent certification body of the Supplier's cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance.

DPA 2018	Data Protection Act 2018
Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach
Data Protection Legislation	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] 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;
Data Protection Impact Assessment	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data
Data Subject Access Request	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.
Default	Any breach of the DPS Agreement by the Supplier, for which the Supplier is liable to CCS. This includes, but is not limited to, breach of a fundamental term, omission, misrepresentation, negligence or negligent statement in relation to this DPS Agreement or the subject matter of this DPS Agreement.
DOTAS	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 powers contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992.
DPS Agreement	This agreement, including the Clauses, DPS Schedules and any annexes to them.
DPS Charging Threshold	The DPS Charging Threshold applicable to the provision of the Services set out in DPS Schedule 3 (Charging Structure).
DPS Guarantee	A deed of guarantee in favour of CCS in the form set out in DPS Schedule 9 (Guarantee).

DPS Guarantor	The person, acceptable to CCS, who provides a DPS Guarantee.
DPS Suppliers	means those suppliers (including the Supplier) appointed by CCS to this DPS from time to time.
Environmental Information Regulations	The Environmental Information Regulations 2004 together with any related guidance and/or codes of practice issued by the Information Commissioner or relevant Government department.
Expiry Date	Means four (4) Years after the DPS Commencement Date
Force Majeure Event	Defined in Clause 10.16.
FOIA	The Freedom of Information Act 2000 and any subordinate legislation made under that Act together with any related guidance and/or codes of practice issued by the Information Commissioner or relevant Government department.
Fraud	Any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this DPS Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown.
GDPR	Means the General Data Protection Regulation (<i>Regulation (EU) 2016/679</i>)
General Anti-Abuse Rule	The legislation in Part 5 of the Finance Act 2013, and any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.
General Change in Law	A Change in Law of a general nature. This includes changes to taxation or duties of any sort affecting the Supplier or which affect or relate to a Comparable Supply.
Guarantor	The person who provides the Customer with the Contract Guarantee.
Good Industry Practice	Standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector.

Grave Misconduct	<p>An act of grave professional misconduct within Regulation 57(8)(c) of the Public Contracts Regulations 2015. This could mean:</p> <ul style="list-style-type: none"> a) poor performance or serious or persistent breaches which have led to the early termination of a contract between the Crown or any Customer and the Supplier, or b) poor performance or a serious breach or breaches which are the subject of proceedings concerning a contract between the Crown or any Customer and the Supplier, or c) serious financial irregularities on the part of the Supplier (within any legal jurisdiction), or d) misconduct which would be regarded as serious by any Regulatory Body.
Improvement Notice	<p>A notice issued by CCS to the Supplier detailing how the Supplier shall improve the provision of the Services.</p>
Improvement Plan	<p>A plan required by CCS from the Supplier which shall detail how the Supplier will improve the provision of the Services.</p>
Information	<p>Where used with a capital I, it has the meaning given under section 84 of the Freedom of Information Act 2000.</p>
Insolvency Event	<p>Means, in respect of the Supplier or DPS Guarantor (as applicable):</p> <ul style="list-style-type: none"> a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986; or b) a winding-up resolution is considered or passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

	<ul style="list-style-type: none"> f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or h) where the Supplier is an individual or partnership, any event analogous to these listed in this definition occurs in relation to that individual or partnership; or i) any event analogous to these listed in this definition occurs under the law of any other jurisdiction.
Intellectual Property Rights or IPR	<p>These mean:</p> <ul style="list-style-type: none"> a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), Know-How, trade secrets and moral rights and other similar rights or obligations 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 c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including the United Kingdom) and the right to sue for passing off.
Key Performance Indicators (KPIs)	The performance measurements set out in Section 2 (Services offered).
Key Sub-Contractor	Any Sub-Contractor which is listed in DPS Schedule 2 (Key Sub-Contractor) or, in the opinion of CCS, performs (or would perform is appointed) a critical role in the provision of all or any part of the Services.
Know-How	All ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Supplier's or CCS's possession before the Appointment Date.
KPI Targets	The acceptable performance levels for each KPI set out in Section 2 Clause 2.8. (Services offered).

Law	means 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 Contractor is bound to comply.
Letter of Appointment	A letter in, or substantially in, the form set out in Part 1 of DPS Schedule 4 (Letter of Appointment and Contract Terms) to be used by Customers to order Services.
LED	Law Enforcement Directive (<i>Directive (EU) 2016/680</i>)
Losses	All losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgement, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise.
Management Levy	The sum payable by the Supplier to CCS on all Charges for the Services invoiced to Customers (net of VAT) in each Month throughout the Term and thereafter until the expiry or earlier termination of all Contracts entered into pursuant to this DPS Agreement. The Management Levy will apply in the following way: <ul style="list-style-type: none"> a) All Charges for Services invoiced to Customers will be charged at 1%. This charge is in consideration of the management and administration of this DPS Agreement. The Supplier shall not pass this charge through to the Customer. CCS may increase this 1% element of the Management Levy after the first Contract Year.
Management Information	The management information specified in DPS Schedule 5 (MI Reporting Template).
MI Default	An Supplier is deemed to be in MI Default if it either: <ul style="list-style-type: none"> a) has 2 consecutive MI Failures, or b) has 2 MI Failures in any rolling six (6) Month period.
MI Failure	If any of the following occur, CCS can treat it as an “MI Failure”: <ul style="list-style-type: none"> a) there are material omissions or errors in the Supplier’s MI Report;

	<ul style="list-style-type: none"> b) the Supplier uses the wrong template for the MI Report c) the Supplier's MI Report including any nil return is late.
MI Report	A Monthly report from the Supplier to CCS containing Management Information, submitted in accordance with Section 6 (Management Information and management levy).
MI Reporting Template	The form of report set out DPS Schedule 5 (MI Reporting Template) setting out certain Management Information the Supplier is required to supply to CCS.
Ministry of Justice Codes	The Ministry of Justice Codes of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA issued under sections 45 and 46 of the FOIA as amended.
Ministry of Justice Guidance	Ministry of Justice Guidance in relation to section 9 of the Bribery Act 2010. It is available at http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf .
MISO	'Management Information System Online', an online portal located at https://miso.ccs.cabinetoffice.gov.uk provided by CCS for collection and receipt of Management Information.
Month	An entire calendar Month. "Monthly" shall be interpreted accordingly.
Occasion of Tax Non-Compliance	<p>This is where any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> a) 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, or b) 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 Disclosure of Tax Avoidance Schemes (DOTAS) or any equivalent or similar regime in any jurisdiction; and/or c) 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 Appointment Date or to a civil penalty for fraud or evasion.
OJEU Notice	The advertisement for this procurement issued in the Official Journal of the European Union with the number.
Open Book Data	<p>Complete and accurate financial and non-financial information which is sufficient to enable CCS to verify the Charges already paid or payable and Charges forecast to be paid during the Term and term of any Contracts, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> a) the Supplier's costs broken down against each Service and/or deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Services; b) operating expenditure relating to the provision of the Services including an analysis showing: c) the unit costs and quantity any consumables and bought-in goods and services; d) manpower resources broken down into the number and grade/role of all Supplier personnel (free of any contingency) together with a list of agreed rates against each manpower grade; and e) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier profit margin.
Order	An order from a Customer to a Supplier for the provision of Services, placed in accordance with the Call for Competition Process.
Party	Either CCS or the Supplier.
Persistent Failure	<p>Any of:</p> <ul style="list-style-type: none"> a) two (2) or more failures by the Supplier to accept an Order within two (2) Working Days of receipt in any rolling period of twelve (12) Months (other than when the Supplier's failure to accept an Order is due to a conflict of interest), or b) 3 or more failures by the Supplier to provide Management Information by the Reporting Date in any rolling period of twelve (12) Months, or c) 2 or more failures by the Supplier to meet the KPI Targets (whether the failures relate to the same or

	different KPI Targets) in relation to one or more Contracts in any rolling period of twelve (12) Months
Proceedings	Refers to both arbitration proceedings which have been commenced and court proceedings where a letter before action or a notice of claim has been issued.
Process/ Processing	This refers specifically to the processing of data under the Data Protection Act 2018. For the purposes of this DPS Agreement, it shall include both manual and automatic processing and “Process” and “Processed” shall be interpreted accordingly.
Prohibited Act	To directly or indirectly offer, promise or give any person working for or engaged by a Customer or CCS a financial or other advantage to: <ul style="list-style-type: none"> a) induce that person to perform improperly a relevant function or activity b) reward that person for improper performance of a relevant function or activity c) commit any offence:] <ul style="list-style-type: none"> • under the Bribery Act 2010 • under legislation creating offences concerning Fraud • at common Law concerning Fraud • committing or attempting or conspiring to commit Fraud.
Protective measures	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.
Proposal	The proposal submitted by a DPS Supplier in response to a Project Specification.
Regulations	The Public Contracts Regulations 2015.
Regulatory Body	Government departments and other bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this DPS Agreement.
Relevant Person	Any employee, agent, servant, or representative of CCS, any Customer or any other public body.

Relevant Tax Authority	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established.
Reporting Date	The date by which an MI Report must be submitted. This is the seventh working day of the Month following the Month to which the relevant Management Information relates, or such other date as may be agreed between the Parties.
Request for Information	A request for information relating to this DPS Agreement, any Contract or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
Request To Participate	The Supplier's response to CCS OJEU Contract Notice through completion of the Selection Questionnaire via the Sid4gov online platform.
Self-Audit Certificate	A certificate in the form set out in DPS Schedule 6 (Self-Audit Certificate) to be provided to CCS in accordance with Clause 7.2.
Service Levels	Any particular service levels detailed in Contracts.
Services	The provision of services to provide a complete campaign solution to Customers as described in Section 2 (Services) which the Supplier can provide to Customers and may include products supplied in connections with or ancillary to the services described.
Services Requirements	The requirements of CCS or any Customer for the Services.
Shortlisting	The Suppliers ability to deselect themselves from the Call for Competition process.
Specific Change in Law	A Change in Law that relates specifically to the business of CCS and/or Customers which would not affect a Comparable Supply.
Statement of Needs	Means an initial research concept document. Very high level and focused on the project deliverables.
Statement of Work	The document outlining the agreed body of works to be undertaken as part of the Contract between the Customer and the Supplier.
Sub-Contract	Any contract or agreement or proposed agreement between the Supplier and a Sub-Contractor.

Sub-Contractor	Any person engaged by the Supplier to provide to the Supplier any part of the Services or any services necessary for the provision of the Services.
Sub-Processor	Any third party to process Personnel Data on behalf of the Contractor related to this Agreement.
Supplier Action Plan	A document, maintained by CCS, capturing information about the relationship between the Parties including, but not limited to strategic objectives, actions, initiatives, communication channels, risks and Supplier performance.
Supplier Confidential Information	Any information that the Supplier gives to CCS or to Customers that is designated as being confidential, or which ought reasonably be considered to be confidential (whether or not it is marked “confidential”). This may include information, however it is conveyed, that relates to the Supplier’s business, affairs, developments, trade secrets, Know-How, personnel and suppliers including all IPRs.
Supplier Representative	The representative appointed by the Supplier in relation to this DPS Agreement.
Supplier Staff	All persons employed by the Supplier, together with the Supplier’s agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor’s servants, consultants, agents and suppliers) used in the performance of the Supplier’s obligations under this DPS Agreement or any Contract.
Term	The duration of this DPS Agreement from the Appointment Date to the Expiry Date or earlier termination of this DPS Agreement.
Termination Notice	A written notice of termination given by one Party to the other, setting out the date on which it intends to terminate the DPS Agreement and why.
Transparency Principles	The principles set out at www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public detailing the requirement for the proactive release of contract information under the Government’s transparency commitment.
Transparency Reports	Information relating to the Services and performance of this DPS Agreement which the Supplier is required to

	provide to CCS in accordance with its reporting requirements under this DPS Agreement.
Working Day(s)	Any day other than a Saturday, Sunday or public holiday in England and Wales.

2. INTERPRETATION

- 2.1 The interpretation and construction of this DPS Agreement shall all be subject to the following provisions:
- 2.1.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa
 - 2.1.2 words importing the masculine include the feminine and the neuter and vice versa
 - 2.1.3 the words 'include', 'includes' 'including' 'for example' and 'in particular' and words of similar effect will not limit the general effect of the words which precede them
 - 2.1.4 references to any person will include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind
 - 2.1.5 references to any statute, regulation or other similar instrument will be construed as a reference to the statute, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted
 - 2.1.6 headings are included in this DPS Agreement for ease of reference only and will not affect the interpretation or construction of this DPS Agreement
 - 2.1.7 references in this DPS Agreement to any "Section", "Clause" or "DPS Schedule" without further designation will be construed as a reference to the clause or sub-clause or schedule to this DPS Agreement so numbered
 - 2.1.8 references in this DPS Agreement to any paragraph or sub-paragraph without further designation will be construed as a reference to the paragraph or sub-paragraph of the relevant DPS schedule to this DPS Agreement so numbered
 - 2.1.9 reference to a Clause is a reference to the whole of that clause unless stated otherwise
- 2.2 If there is any conflict between the requirements of this DPS Agreement and the terms and conditions of any Contract, the conflict shall be resolved in accordance with the following order of precedence:

- 2.2.1 this DPS Agreement
- 2.2.2 the Contract Terms and
- 2.2.3 any other document referred to in the Contract (not including this DPS Agreement).

DPS SCHEDULE 2: KEY SUB-CONTRACTORS

- 1.1 The Sub-Contractors specified in your DPS Selection Questionnaire shall be deemed key Sub-Contractors for the purposes of this DPS Agreement.

DPS SCHEDULE 3: CHARGING STRUCTURE

1. General provisions

- 1.1 There are no DPS Prices specified in this DPS Schedule 3 (Charging Structure), contract charges shall be determined by the Customer at Call for Competition stage for individual contracts.
- 1.2 The Supplier acknowledges and agrees that any Charges submitted in relation to a Call for Competition will be equal to or lower than the Maximum Charging Threshold as specified in Annex 1 of this DPS Schedule 3.
- 1.3 The Maximum Charging Threshold specified in Annex 1 of this DPS Schedule 3 (Charging Structure) are not DPS Prices, as specified in clause 1.1 above.
- 1.4 The customer reserves the right to specify within their project Statement of Works at Call for Competition stage, any specialist staff grades which are not detailed in this Annex 1 (Maximum Charging Threshold).

2. Review of the DPS Maximum Charging Thresholds

- 2.1 CCS reserve the right to review the DPS Maximum Charging Threshold and adjust them if necessary in accordance with clause 8.12 (Value for Money) of this DPS Agreement.
- 2.2 Subject to paragraph 2.1, the DPS Maximum Charging Threshold will remain fixed for one (1) year from the Appointment Date.
- 2.3 CCS reserves the right to review the DPS Maximum Charging Threshold every six (6) months after the first contract year from the Appointment Date.

3. Implementation of adjusted DPS Maximum Charging Thresholds

- 3.1 Variations to the DPS Maximum Charging Threshold will take effect on a date determined by CCS.
- 3.2 Variations do not affect the Charges payable by a Customer under a Contract which had already been agreed before the variation takes effect.
- 3.3 Any variation to the Charges payable under a Contract must be agreed in writing between the Supplier and the relevant Customer and implemented in accordance with the provisions applicable to the Contract.

ANNEX 1: MAXIMUM CHARGING THRESHOLD

1.1 Suppliers should refer to the table below for the Maximum Charging Threshold which would be considered under each of the staff grade categories:

Staff Grade	Description	Maximum Charging Threshold (Day Rate)
Board Level / Chief Executive	As described in Category A roles, with further strategic decision making responsibility and overall accountability of organisation	£1,738.00
Category A	<p>Senior member of personnel, e.g Research Director having assumed responsibilities in his/her profession through the performance of management and supervision roles.</p> <p>Typically, he/ she shall have ten (10) years or more professional experience of which at least four (4) years must be relevant to the type of tasks to be performed under the contract at this level.</p>	£1,413.00
Category B	<p>Certified member of personnel e.g. Senior Researcher or Research Manager having received a high-level training in his/her profession and recruited for his/her appreciated skills as regards professional practice.</p> <p>Typically, he/she must have five (5) years professional experience of which at least two (2) years shall be relevant to the type of tasks to be performed under the contract at this level.</p>	£943.00
Category C	<p>Member of personnel such as a researcher.</p> <p>Typically, with two (2) to four (4) years experience, with understanding and grounding in research projects and the type of tasks to be performed under the contract at this level.</p>	£875.00
Category D	<p>Junior member of research personnel e.g. junior researcher.</p> <p>Typically, with two (2) years experience. A newcomer to the profession but with training related to the type of tasks to be performed under the contract at this level.</p>	£648.00

Category E	Administrative or general junior personnel (e.g. those involved in ensuring the logistics of the tasks are undertaken).	£408.00
------------	---	---------

- 1.2 The customer reserves the right to specify within their project Statement of Works at Call for Competition stage, any specialist staff grades which are not detailed in Annex 1 (Maximum Charging Threshold) as detailed in clause 1.1 above.

DPS SCHEDULE 4: LETTER OF APPOINTMENT AND CONTRACT TERMS

Part 1: Letter of Appointment

[Letterhead of Customer]

Dear Sirs

Letter of Appointment

This letter of Appointment is issued in accordance with the provisions of the DPS Agreement (RXXX) between CCS and the Supplier dated [xxxx].

Capitalised terms and expressions used in this letter have the same meanings as in the Contract Terms unless the context otherwise requires.

Order Number:	[]
From:	[] ("Customer")
To:	[] ("Supplier")

Effective Date:	[]
Expiry Date:	End date of Initial Period [] End date of Maximum Extension Period [] Minimum written notice to Supplier in respect of extension: []

Services required:	Set out in Section 2, Part B (Specification) of the DPS Agreement and refined by: · the Customer's Project Specification attached at Annex A and the Supplier's Proposal attached at Annex B; and [insert supplemental information if any]
--------------------	--

Key Individuals:	[]
[Guarantor(s)]	[]

Contract Charges (including any applicable discount(s), but excluding VAT):	[]
Insurance Requirements	<p>[Additional public liability insurance to cover all risks in the performance of the Contract, with a minimum limit of £[x] million for each individual claim]</p> <p>[Additional employers' liability insurance with a minimum limit of £[x] indemnity]</p> <p>[Additional professional indemnity insurance adequate to cover all risks in the performance of the Contract with a minimum limit of indemnity of £[x]1 million for each individual claim.]</p> <p>[Product liability insurance cover all risks in the provision of Deliverables under the Contract, with a minimum limit of £[x] million for each individual claim]</p>
Customer billing address for invoicing:	[]
Alternative and/or additional provisions (including Schedule 6 (Additional clauses)):	[]

FORMATION OF CONTRACT

BY SIGNING AND RETURNING THIS LETTER OF APPOINTMENT (which may be done by electronic means) the Supplier agrees to enter a Contract with the Customer to provide the Services in accordance with the terms of this letter and the Contract Terms.

The Parties hereby acknowledge and agree that they have read this letter and the Contract Terms.

The Parties hereby acknowledge and agree that this Contract shall be formed when the Customer acknowledges (which may be done by electronic means) the receipt of the signed copy of this letter from the Supplier within two (2) Working Days from such receipt

For and on behalf of the Supplier:

Name and Title:

Signature:

Date:

For and on behalf of the Customer:

Name and Title:

Signature:

Date:

ANNEX A

Customer Project Specification

To be determined by the Customer at Call for Competition stage

ANNEX B

Supplier Proposal

To be determined at Call for Competition stage

Part 2: Contract Terms

Refer to RM6018 Research Marketplace Bid Pack – Contract Terms V1.0

DPS SCHEDULE 5: MI REPORTING TEMPLATE

1. Management information template completion guidance notes

1.1 Completion of your MI return: Suppliers may download a new template form Management Information system Online (MISO) each Month to ensure they have the latest copy. If you have no data to submit for the month in question, please use the nil return function on MISO.

1.2 Template column headings: Each column has one of the following colour codes

1.2.1 Orange - mandatory field which must be populated. Failure to populate these fields will result in you being asked to resubmit your MI return

1.2.2 Blue - required field. Please populate as much as possible.

Each column heading contains comments which will provide you with details of what is required in the column. Please check this before you populate.

1.3 Acceptable values: Where applicable, acceptable values may be listed within the comments field attached to each column, provided in a drop-down box within the cell or the comments will refer you to a tab contained within the MI template. Please ensure you use these acceptable values, these are case sensitive and must be completed as shown. Any other values entered within these fields will cause validation errors when loading onto MISO.

1.4 Format of data: Please ensure data entries adhere to any formatting requirements specified in the cell comments. For example, all dates should be entered in DD/MM/YYYY format. Please do not enter values such as N/A, dashes or TBC in any cells unless instructed to do so by the cell comments. Please also avoid using speech marks (“”) in any cell.

1.5 Further guidance: If your MI returns fails to upload onto MISO please send a copy of your completed MI return and a screenshot of any error message to the below email address. Please contact the MISO support team using the contact details below if you require any assistance.

MISO mailbox: MI.collection@crownccommercial.gov.uk

1.6 URN & UNSPSC code identification guidance notes: Finding a customer URN code (Unique Customer Reference Number).

1.6.1 A downloadable list of all of the up to date URN numbers can be found here: <https://www.gov.uk/guidance/current-crown-commercial-service-suppliers-what-you-need-to-know>

1.6.2 If you cannot find a particular URN contact the Customer Service Desk using this link: info@crownccommercial.gov.uk

1.6.3 When requesting a URN to be set up, please supply the name, full address including post code, and a contact telephone number.

ANNEX A – MI TEMPLATE

To be inserted by Sourcing Operations once finalised

DPS SCHEDULE 6: ANNUAL SELF-AUDIT CERTIFICATE

[letterhead of Supplier or Supplier's external auditor]

Crown Commercial Service
9th Floor
The Capital
Old Hall Street
Liverpool L3

for itself and as agent for the Customers (as defined below)

Dear Sirs

We refer to the **Research Marketplace DPS Agreement RM6018** (the “**DPS Agreement**”) dated **[INSERT DATE]** between the Minister for the Cabinet Office, acting through Crown Commercial Services (CCS) as CCS, and **[NAME]** as the Supplier.

Capitalised terms and expressions used in this letter have the same meanings as in the DPS Agreement unless the context otherwise requires

In line with Clause 6.2 of the DPS Agreement, we hereby confirm the following:

1. In our opinion based on the testing undertaken **[INSERT SUPPLIER NAME]** has in place suitable systems for identifying and recording the transactions taking place under the provisions of the DPS Agreement.
2. We have tested the systems for identifying and reporting on DPS activity and found them to be operating satisfactorily.
3. We have tested a sample of **[◆]** **[Insert number of sample transactions tested]** Orders and related invoices during our audit for the financial year ended **[insert financial year]** and confirm that:
 - such Orders are clearly identified in the Supplier's order processing/invoicing systems as Orders under the DPS
 - where required, such Orders were completely and accurately included in the MI Reports
 - all invoices related to such Orders were completely and accurately included in the MI Reports
 - all Charges in relation to such Orders comply with the requirements of the DPS on maximum mark-ups, discounts, charge rates and fixed quotes (as applicable)
 - There are no prosecutions for the breach of the Data Protection Act that have not already been reported.
4. Where no invoices or orders have been reported, we confirm that we have not had any business to report through the DPS in the Period.

Yours faithfully

Name:.....

Signed:.....

Head of Internal Audit/ Finance Director/ External Audit firm (delete as applicable)

Date:.....

DPS SCHEDULE 7: COMMERCIALLY SENSITIVE INFORMATION – NOT USED

DPS SCHEDULE 8: DPS MANAGEMENT

1. Introduction

- 1.1 The successful delivery of this DPS Agreement will rely on the ability of the Supplier and CCS to develop and maintain a strategic relationship, from award throughout the full Term of this DPS Agreement.
- 1.2 To achieve this, both Parties will need to adopt proactive DPS management activities and share information effectively.
- 1.3 This Schedule 8 outlines the general structures and management activities that the Parties shall follow during the Term of this DPS Agreement.

2. DPS management

DPS Management Structure

- 2.1. The Supplier shall provide a suitably qualified nominated contact (the “**DPS Manager**”) who will take overall responsibility for delivering the Services required within this DPS Agreement, as well as a suitably qualified deputy to act in their absence.
- 2.2. The Supplier shall put in place a management structure to manage the DPS in accordance with Section 2 (Services Offered).
- 2.3. A full governance structure for the DPS will be agreed between the Parties during the DPS Agreement implementation stage.

DPS Review Meetings

- 2.4. CCS will communicate with Suppliers on the DPS agreement at least once per calendar year throughout the term of the DPS agreement. This will be via collective briefings or individual meetings.
- 2.5. CCS reserves the right to increase the frequency of the meetings as required.
- 2.6. The exact timings, frequencies and content of such briefings or Meetings will be determined by CCS following award of the DPS Agreement. Both Parties are expected to be flexible about the frequency, timings and content of these briefings and meetings.

Strategic Management Reviews

- 2.7. The Supplier Representative and CCS Representative will meet every twelve (12) Months. CCS sees these meetings as a vital element in developing a strategic relationship with the Supplier and building in a positive working relationship. The content of these meetings will be agreed between both Parties at least fourteen (14) Working Days before the date of the Strategic Management Review. However, as a minimum they will consider:
- 2.7.1. overall DPS performance, including the Supplier's supply chain performance, and its usage of SMEs to supply and/or deliver goods and services
 - 2.7.2. efficiency opportunities
 - 2.7.3. benchmarking, including progress against Government efficiency targets
 - 2.7.4. market conditions
 - 2.7.5. policy updates including emerging Government initiatives, and
 - 2.7.6. security and risk management

Management and Operational Review Meetings

- 2.8. Management and Operational Review Meetings will be held every quarter between CCS, and the Supplier's DPS Manager(s) and representatives from key Customers.
- 2.9. The meeting agenda will cover, but not be limited to, the following:
- 2.9.1. transition and on-boarding of key new customers (milestones and progress against targets) including contract compliance and Supplier sector strategies (key customers can be defined as those who are of a strategic importance to the success of the DPS)
 - 2.9.2. performance against Key Performance Indicators (KPIs);
 - 2.9.3. DPS revenue and savings performance, submission of MI and sector revenue performance;
 - 2.9.4. incident and problem management;
 - 2.9.5. forward planning, opportunities and future efficiencies including standardisation and rationalisation;
 - 2.9.6. Customer Satisfaction Surveys (quality and delivery of the Services);
 - 2.9.7. new service roadmaps, and
 - 2.9.8. support to category teams relating to cashable benefits.
- 2.10. The information reviewed at the meetings will be based on MI provided by the Supplier.

3. Operational Review Meetings

3.1. Operational review meetings will be held every quarter between CCS and the Suppliers management team. They will cover, but not be limited to, the same information as will be discussed in management review meetings.

3.2. At CCS's discretion, the management and operational review meetings may be combined.

4. Key performance indicators

4.1. The Key Performance Indicators (KPIs) applicable to this DPS Agreement are set out in Section 2 (Services offered) Clause 2.8. The review and ongoing monitoring of KPIs will form a key part of the DPS management process as outlined in this Schedule 8.

4.2. The Supplier shall establish processes to monitor its performance against the agreed KPIs in order to report progress to CCS and Customers. The Supplier shall at all times ensure compliance with the standards set by the KPIs.

4.3. CCS will review progress against these KPIs to evaluate the effectiveness and efficiency with which the Supplier performs its obligations to fulfil the DPS Agreement.

4.4. The Supplier's performance against these KPIs will be reviewed during the DPS Review Meetings.

4.5. The Supplier shall provide a Monthly report on its performance against each of the KPIs listed in Section 2 (Services offered).

4.6. CCS reserves the right to adjust, introduce new, or remove KPIs throughout the Contract Period. However any significant changes to KPIs must be agreed between CCS and the Supplier

5. Efficiency tracking performance measures

5.1. The Supplier shall cooperate with CCS to develop efficiency tracking performance measures for the DPS Agreement. This includes but is not limited to:

5.1.1. tracking uptake and services costs, in order to demonstrate that Customers are buying more smartly;

5.1.2. developing additional KPIs to ensure that the DPS Agreement supports the emerging target operating model across central government (particularly in terms of the use of centralised sourcing and category management, procurement delivery centres and payment processing systems and shared service centres).

5.2. The efficiency tracking performance measures will be developed and agreed between CCS and the Supplier during the DPS Agreement. They will then be incorporated into the list of KPIs set out in Section 2 (Services Offered) Clause 2.8.

5.3. The ongoing progress and development of the efficiency tracking performance measures shall be reported through DPS management activities as outlined in this Schedule 8.

6. Escalation procedure

6.1. If CCS and the Supplier are unable to agree the performance score for any KPI during an operational review meeting, the disputed score will be recorded and the matter referred to the management review Meeting for resolution.

6.2. If the matter is not resolved at the management review meeting, it will be referred to CCS' representative and the supplier's representative to determine the best course of action. This will involve organising an ad-hoc meeting to discuss the performance issue specifically.

6.3. If CCS' representative and the Supplier's representative fail to reach a resolution, the matter will be dealt with by following the Dispute Resolution Procedures (Clause 17.4 - 17.13).

DPS SCHEDULE 9: GUARANTEE

[Guidance Note: this is a draft form of guarantee which can be used to procure either a DPS Guarantee or a Contract Guarantee, and so it will need to be amended to reflect the Beneficiary's requirements.]

[INSERT THE NAME OF THE GUARANTOR]

- AND -

[INSERT THE NAME OF THE BENEFICIARY]

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20[]

BETWEEN:

- (1) **[Insert the name of the Guarantor]** [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] (“**Guarantor**”); in favour of
- (2) **[CCS]** [Insert name of Customer who is Party to the Guaranteed Agreement] whose principal office is at [] (“**Beneficiary**”)

[Guidance note: Where this deed of guarantee is used to procure a DPS Guarantee in favour of CCS, this paragraph numbered (2) above will set out the details of CCS. Where it is used to procure a Contract Guarantee in favour of a Customer this paragraph numbered (2) above will set out the details of the relevant Customer]

WHEREAS:

- (A) The Guarantor has agreed to guarantee all of the Supplier's obligations to the Beneficiary under the Guaranteed Agreement.
- (B) It is the intention of the Parties that this document be executed and take effect as a deed.

The Guarantor hereby agrees with the Beneficiary as follows:

1 Definitions and Interpretation

- 1.1 Unless specifically defined in this Deed of Guarantee, defined terms shall have the same meaning in this Deed of Guarantee as they have for the purposes of the Guaranteed Agreement.
- 1.2 The words and phrases below shall have the following meanings:

[Guidance Note: Insert and/or settle Definitions, including from the following list, as appropriate to either DPS Guarantee or Contract Guarantee]

[“CCS”]	has the meaning given to it in the DPS Agreement]
----------------	---

["Beneficiary"]	means [CCS] [insert name of the Customer with whom the Supplier enters into a Contract]
["Contract"]	has the meaning given to it in the DPS Agreement]
["DPS Agreement"]	means the DPS Agreement for the Services made between CCS and the Supplier]
["Guaranteed Agreement"]	means [the DPS Agreement] [the Contract] made between the Beneficiary and the Supplier on [insert date]]
["Guaranteed Obligations"]	means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement]
["Services"]	has the meaning given to it in the DPS Agreement]

1.3 Unless the context otherwise requires:

- words importing the singular are to include the plural and vice versa
- references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect
- the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible
- reference to a gender includes the other gender and the neuter
- references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted and to any regulations made under it;
- any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words
- references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee, and
- references to liability are to include any liability whether actual, contingent, present or future.

2. Guarantee and indemnity

- 2.1 The Guarantor irrevocably and unconditionally guarantees to the Beneficiary to ensure that the Supplier performs all of the Guaranteed Obligations due to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes to pay the Beneficiary on demand all monies and liabilities which the Supplier owes to the Beneficiary under or in connection with the

Guaranteed Agreement or in respect of the Guaranteed Obligations, as if it were a primary obligor.

2.3 If at any time the Supplier fails to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, unconditionally undertakes to the Beneficiary that, on demand by the Beneficiary it will, at its own e cost and expense:

- fully, punctually and specifically perform the Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
- as a separate obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and, without limitation, all court costs and all legal fees on a solicitor and own customer basis, together with any disbursements) of whatever nature which may result from a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than would be imposed on the Supplier under the Guaranteed Agreement.

2.4 As a separate obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and , without limitation, all legal costs and expenses), the Beneficiary may incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal. The Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3. Obligation to enter into a new contract

3.1 If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void for any reason, then the Guarantor will, at the request of the Beneficiary, enter into a contract with the Beneficiary on similar terms to the Guaranteed Agreement. The obligations of the Guarantor under such substitute agreement will be the same as if the Guarantor had been original obligor under the Guaranteed Agreement.

4. Demands and Notices

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

[Address of the Guarantor in England and Wales]

For the Attention of [insert details]

For the purpose of this clause, an email is accepted as being 'in writing'.

4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

- if delivered by hand, at the time of delivery

- if posted, at 10.00 a.m. on the second Working Day after it was put into the post
 - if emailed, at 9:00 on the second Working Day after sending
- 4.3 To prove notice has been served on the Guarantor or the Beneficiary, it will be sufficient to prove that delivery was made.
- 4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5. Beneficiary's protections

- 5.1 The Guarantor will not be discharged or released from this Deed of Guarantee by:
- any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor)
 - any amendment to or termination of the Guaranteed Agreement
 - any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with the assent of the Guarantor) or
 - the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor
- 5.2 This Deed of Guarantee will be a continuing security for the Guaranteed Obligations and will not:
- be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee
 - be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person
- 5.3 If, for any reason, any of the Guaranteed Obligations prove to have been or become void or unenforceable against the Supplier, the Guarantor will nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof.
- 5.4 The rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.5 The Beneficiary is entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes. The making of a demand (whether effective, partial or defective) in respect of the breach or non-performance by the Supplier of any

Guaranteed Obligation will not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

5.6 Before taking steps to enforce this Deed of Guarantee against the Guarantor, the Beneficiary is not obliged to:

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

No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment will prejudice or affect the liability of the Guarantor.

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

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

5.9 Any release, discharge or settlement between the Guarantor and the Beneficiary will be conditional on no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded for any reason. If this condition is not fulfilled, the Beneficiary is entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary is entitled to retain this security after the payment, discharge or satisfaction of all monies, obligations and liabilities that are due to it from the Guarantor, for such period as the Beneficiary may determine.

6. Guarantor intent

6.1 The Guarantor confirms that this Deed of Guarantee will extend to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

7. Rights of subrogation

7.1 If the Supplier fails to perform any of the Guaranteed Obligations, or the Guarantor fails to perform any of its obligations under this Deed of Guarantee, the Guarantor may in accordance with the Beneficiary's written instructions exercise any rights it may have:

- of subrogation and indemnity
- to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations and
- to prove in the liquidation or insolvency of the Supplier

7.2 The Guarantor must hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay it to the Beneficiary on first demand. The Guarantor hereby acknowledges that it:

- has not taken any security from the Supplier
- will not to do so until the Beneficiary receives all moneys owed to it
- will hold any security taken in breach of this Clause on trust for the Beneficiary.

8. Deferral of rights

8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

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

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

9 Representations and warranties

9.1 The Guarantor hereby represents and warrants to the Beneficiary that:

- the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets
- the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee
- the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract under Clause 3,

have been duly authorised by all necessary corporate action and do not contravene or conflict with:

- o the Guarantor's memorandum and articles of association or other equivalent constitutional documents
- o any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject or
- o the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets
- it has obtained all governmental and other authorisations, approvals, licences and consents to enable it lawfully to enter into this Deed of Guarantee and comply with its obligations under it, and
- this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10 Payments and set-off

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee will be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law. If any deduction or withholding must be made by law, the Guarantor will pay the additional amount necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received, if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor will pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11. Guarantor's acknowledgement

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

12. Assignment

- 12.1 The Beneficiary is entitled to assign or transfer the benefit of this Deed of Guarantee at any time, to any person, without the consent of the Guarantor being required. Any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
- 12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13. Severance

- 13.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed. The remainder of the provisions will continue in full force and effect as if this Deed of Guarantee had been executed without the invalid, illegal or unenforceable provision.

14. Third party rights

- 14.1 A person who is not a Party to this Deed of Guarantee has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 14.2 Customers, with the prior approval of CCS, enforce the following provisions of this DPS Agreement which are capable of being for the benefit of any Customer as a third-party beneficiary in accordance with the Contracts (Rights of Third Parties Act 1999. These are:
- Section 4 (How Services will be bought (Call for Competition Process))
 - Clause 5.1 (Warranties and Representations)
 - Clause 7.11 to 7.12 (Customer Satisfaction Monitoring)
 - Clause 7.13 to 7.25 (Confidentiality)
 - Clause 9.20 to 9.25 (Consequences of Termination and Expiry)
 - Clause 9.25 to 9.26 (Severability)
 - Clause 10.8 to 10.15 (Insurance)

15. Governing Law

- 15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 15.2 The courts of England have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee.
- 15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction. The taking of any such proceedings in one or more jurisdictions will not preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

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

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

[Guidance Note: Include the above provision when dealing with the appointment of English process agent by a non English incorporated Guarantor]

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

EXECUTED as a DEED by

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

Director

Director/Secretary

DPS SCHEDULE 10: VARIATION FORM

Variation Form No:

.....

BETWEEN:

The Minister for the Cabinet Office, represented by the Crown Commercial Service, 9th Floor, The Capital, Old Hall Street, Liverpool, L3 9PP ("**CCS**")

and

("the **Supplier**")

1. This DPS Agreement is varied as follows and shall take effect on the date signed by both Parties:

[Guidance Note: Insert details of the Variation]

2. Words and expressions in this Variation shall have the meanings given to them in the DPS Agreement.
3. The DPS Agreement, 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 CCS

Signature	
Date	
Name (in Capitals)	
Address	

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

Signature	
Date	
Name (in Capitals)	
Address	

DPS SCHEDULE 11: PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The Supplier shall comply with any further written instructions with respect to processing by the Customer.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
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>

<p>Categories of Data Subject</p>	<p><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></p>
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p><i>[Describe how long the data will be retained for, how it be returned or destroyed]</i></p>