

Digital Outcomes and Specialist Framework Agreement Call-Off Contract

The Call-Off Contract for the Digital Outcomes and Specialists Framework Agreement (RM1043iii) includes:

- Part A - Order Form
- Part B - The Schedules
 - Schedule 1 - Requirements
 - Schedule 2 - Supplier's response
 - Schedule 3 - Statement of Work (SOW), including pricing arrangements
 - Schedule 4 - Contract Change Notice (CCN)
 - Schedule 5 - Optional Buyer terms and conditions
- Part C - Terms and Conditions

The Call-Off Contract Order Form (Part A) and the Schedules (Part B) will become the binding contract after the Further Competition. Details will be added after the award of the Framework. The Order Form may include:

- Buyer and Supplier details
- Contract term, Deliverables, location, warranties, staffing needs, staff vetting procedure, and standards required
- charges, charging method, payment methods, payment terms and invoicing
- additional Buyer terms and conditions
- governance, methodology, and Buyer and Supplier responsibilities

During the lifetime of the Framework Agreement, the Call-Off Contract Order Form template will be regularly updated to ensure that it continues to meet user needs.

Part C – Terms and conditions as at www.TBC.gov.uk

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1. **Contract start date and length**

1.1 Completion dates for deliverables are in the Statement of Work (SOW). Where there are multiple SOWs, the Contract will end on the latest completion date for a deliverable specified in the final SOW unless terminated earlier.

2. **Supplier staff**

2.1 The Supplier staff will:

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

2.2 The Supplier will ensure that key staff are assigned to the project for their agreed working days and are not removed from the services during the Contract period.

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

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

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

3. Swap-out

3.1 Supplier staff can only be swapped out with prior approval of the Buyer. The Buyer can have discussions and establish an approval process with the Supplier.

4. Staff vetting procedures

4.1 All Supplier staff will need to be security cleared to the level determined by the buyer. The Supplier will ensure that each member (or prospective member) of its staff who will be given access to the Buyer's assets from the start date, will be security cleared.

4.2 This clearance level may change for some roles during the Contract period.

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

5. Due diligence

5.1 The Supplier agrees that when accepting a Call-Off Contract, it:

5.1.1 has made its own enquiries and is satisfied by the accuracy of any information supplied by the Buyer

5.1.2 confident it can provide the Services according to the terms of the Call-Off Contract

5.1.3 has raised all due diligence questions before the Call-Off Contract

5.1.4 has entered into the Call-Off Contract relying on its own due diligence

6. Warranties, representations and acceptance criteria

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

Industry Practice.

- 6.2 The Supplier warrants that all Supplier staff assigned to the performance of the services will have the necessary qualifications, skills and experience for the proper performance of the services.
- 6.3 The Supplier warrants, represents and undertakes to the Buyer that each deliverable will meet the Buyer's acceptance criteria, as defined in the Call-Off Contract Order Form.
- 6.4 The Supplier must warrant any interface and the interoperability between third-party software or services and the developed software or Service.
- 6.5 The Supplier must warrant that it has full capacity and authority and all necessary authorisations, consents, licences, permissions to perform the Call-Off Contract.

7. Business continuity and disaster recovery

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

8. Payment terms and VAT

- 8.1 The Buyer will pay the Supplier within 30 days of receipt of a valid invoice submitted in accordance with this Contract.
- 8.2 The Supplier will ensure that each invoice contains the information specified by the Buyer in the Order Form.
- 8.3 The Contract Charges are deemed to include all Charges for payment processing and all Management Charges payable to Crown Commercial Service (CCS) or other bodies. All invoices submitted for the services must not include any such Charges.

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

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

10. Insurance

The Supplier will have the insurance detailed below and any other insurance required by Law under the Call-Off Contract.

10.1 Subcontractors

10.1.1 The Supplier will ensure that, during the Call-Off Contract, Subcontractors have:

- third-party public and products liability insurance of the same amounts that the Supplier would be legally liable to pay as damages, including claimant's costs and expenses, for:
 - accidental death or bodily injury
 - Loss of or damage to property, with a minimum of £5,000,000

10.2 Agents and professional consultants

10.2.1 The Supplier will also ensure that all agents and professional consultants involved in the supply of Services have professional indemnity insurance with a minimum indemnity of £1,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the termination or expiry date to the Call-Off Contract to which the insurance relates.

10.3 Further or extended insurance

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

10.3.2 The Supplier will give CCS, or the Buyer, evidence that the insurance meets the requirements of this clause. This can be:

- a broker's verification of insurance
- receipts
- other evidence of payment of the latest premiums due

10.4 Supplier liabilities

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

10.4.2 Without limiting the other provisions of the Call-Off Contract, the Supplier will:

- take all risk control measures relating to the services as it would be reasonable to expect of a contractor acting according to Good Industry Practice, including the investigation and reports of claims to insurers
- promptly notify the insurers in writing of any relevant material fact under any insurances of which the Supplier is, or becomes, aware

- hold all insurance policies and cause any insurance broker effecting the insurance to hold any insurance slips and other evidence of placing cover representing any of the insurance to which it is a party

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

10.5 Indemnity to principals

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

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

10.6 Cancelled, suspended, terminated or unrenewed policies

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

10.7 Premium, excess and deductible payments

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

- be liable for the premium
- pay promptly

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

11. Confidentiality

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

11.2 Disclosure of Confidential Information is permitted where information:

- 11.2.1 must be disclosed to comply with legal obligations placed on the party making the disclosure

- 11.2.2 belongs to the party making the disclosure (without obligation of confidentiality) before its disclosure by the information owner
 - 11.2.3 was obtained from a third party without obligation of confidentiality, before receiving it from the disclosing party
 - 11.2.4 is, or becomes, public knowledge, otherwise than by breach of this clause
 - 11.2.5 is independently developed without access to the other party's Confidential Information
 - 11.2.6 is used to get confidential professional advice
- 11.3 The Buyer may disclose the Supplier's Confidential Information:
- 11.3.1 to any central government body on the basis that the information may only be further disclosed to central government bodies
 - 11.3.2 to the UK Parliament, Scottish Parliament or Welsh or Northern Ireland Assemblies, including their committees
 - 11.3.3 if the Buyer (acting reasonably) deems disclosure necessary or appropriate while carrying out its public functions
 - 11.3.4 on a confidential basis to exercise its rights or comply with its obligations under this Call-Off Contract
 - 11.3.5 to a proposed transferee, assignee or novatee of, or successor in title to, the Buyer
- 11.4 References to disclosure on a confidential basis will mean disclosure subject to a confidentiality agreement or arrangement containing the same terms as those placed on the Buyer under this clause.
- 11.5 The Supplier may only disclose the Buyer's Confidential Information to staff who are directly involved in the provision of the services and who need to know the information to provide the services. The Supplier will ensure that staff will comply with these obligations.
- 11.6 Either party can use techniques, ideas or knowledge gained during this Contract unless their use of these things results in them disclosing the other party's Confidential Information that is not permitted by this Framework Agreement, or is an infringement of Intellectual Property Rights.
- 11.7 Information about orders placed by a Buyer (including pricing information and the terms of any Call-Off Contract) may be published by CCS and may be shared with

other Buyers. Where confidential information is shared with other Buyers, CCS will notify the recipient of the information that its contents are confidential.

12. Conflict of Interest

12.1 The Supplier will take all appropriate steps to ensure that Supplier staff are not in a position where there is or may be an actual conflict between the financial or personal interests of the Supplier Staff and another Supplier who are both performing the Services to the Buyer under this Framework Agreement or any Call-Off Contract.

12.2 Any breach of this will be deemed to be a Material Breach.

12.3 A conflict of interest may arise in situations including where the Supplier staff:

12.3.1 is related to someone in another Supplier team who both form part of the same team performing Services under this Framework Agreement

12.3.2 has a business interest in another Supplier who is part of the same team performing Services under this Framework Agreement

12.3.3 is providing, or has provided, services to the Buyer for the discovery phase

12.3.4 have been provided with, or had access to, information which would give the Supplier or an affiliated company an unfair advantage in a competition procedure

12.4 Where the Supplier identifies a risk of a conflict or potential conflict, they will (and before the Call-Off Start Date of any affected Call-Off Contract, unless agreed with the Buyer otherwise) tell the Buyer of such conflicts of interest and how they plan to mitigate the risk by establishing the necessary ethical wall arrangement(s) to prevent any conflict of interest. Details of such arrangements are to be sent to the Buyer as soon as possible. On receiving this notification, the Buyer will, at their sole discretion, tell the Supplier if the arrangements are acceptable or whether they deem it a Material Breach.

13. Intellectual Property Rights

13.1 Unless otherwise specified in this Contract:

13.1.1 the Buyer will not have any right to the Intellectual Property Rights (IPRs) of the Supplier or its licensors, including the Supplier background IPRs and the Supplier software

13.1.2 the Crown can publish the project specific IPRs (Specially Written Software) as open source

- 13.1.3 the Supplier will not, without prior written approval from the Buyer, include any Supplier background IPR in the Specially Written Software in such a way to prevent its publication
- 13.1.4 failure to seek prior approval gives the Buyer right and freedom to publish all Specially Written Software
- 13.1.5 the Supplier will not have any right to the Intellectual Property Rights of the Buyer or its licensors, including:
- 13.1.5.1 the Buyer background IPRs
 - 13.1.5.2 the project specific IPRs
 - 13.1.5.3 IPRs in the Buyer Data
- 13.2 Where either party acquires, by operation of Law, right to IPRs that is inconsistent with the allocation of rights set out above, it will assign in writing such IPRs as it has acquired to the other party on the request of the other party (whenever made).
- 13.3 The Supplier will not, (except when necessary for the performance of this Contract) without approval from the Buyer, use or disclose any of the Buyer background IPR, Buyer Data or the project-specific IPRs to or for the benefit of any third party.
- 13.4 The Supplier will not include any Supplier background IPRs or third-party IPRs in any release or Deliverable that is to be assigned to the Buyer under this Contract, without approval from the Buyer. The default position is that this IPR will be assigned to the Buyer on terms equivalent to the Open Government Licence terms.
- 13.5 The Supplier will grant the Buyer (and any replacement Supplier) a perpetual, transferable, non-exclusive, royalty-free licence to copy, modify, disclose and use the Supplier background IPRs for any purpose connected with the receipt of the services that is additional to the rights granted to the Buyer under this Contract and to enable the Buyer:
- 13.5.1 to receive the services
 - 13.5.2 to make use of the services provided by the replacement Supplier
- 13.6 The Buyer grants the Supplier a non-exclusive, non-assignable, royalty-free licence to use the Buyer background IPRs, the Buyer Data and the project-specific IPRs during the Contract period for the sole purpose of enabling the Supplier to provide the services.

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

13.7.1 includes the right to grant sub-licences to Subcontractors engaged in providing any of the services (or part thereof) provided that any such Subcontractor has entered into a confidentiality undertaking with the Supplier on the same terms as in clause 11 (Confidentiality) and that any such subcontracts will be non-transferable and personal to the relevant Subcontractor

13.7.2 is granted solely to the extent necessary for the provision of the services in accordance with this Contract. The Supplier will ensure that the Subcontractors do not use the licensed materials for any other purpose

13.8 At the end of the Contract period, the Buyer grants to the Supplier a licence to use the project-specific IPRs (excluding any information which is the Buyer's Confidential Information or which is subject to the Data Protection Act (DPA)) on the terms in the Open Government Licence.

13.9 Subject to the above paragraph, the Supplier will ensure that no unlicensed software or open source software (other than the Open Source Ordered Software) is interfaced with or embedded within any Buyer Software or project-specific IPRs.

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

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

13.12 If the third-party IPR is made available on terms equivalent to the Open Government Licence, the request for approval will be agreed and the Supplier will buy licences under these terms. If not, and the Buyer rejects the Request for Approval, then a formal Contract change note [clause 28] will be required.

13.13 The Supplier will on demand, during and after the Contract period, fully indemnify and ensure the Buyer and the Crown are held harmless from all losses which may incur at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) as a result of any claim (whether actual alleged asserted

and/or substantiated and including third party claims) that the rights granted to the Buyer in accordance with this Contract or the performance by the Supplier of the provision of the services or the possession or use by the Buyer of the services or deliverables delivered by the Supplier infringes or allegedly infringes a third party's Intellectual Property Rights ('Claim') except where the Claim arises from:

13.13.1 designs supplied by the Buyer

13.13.2 the use of data supplied by the Buyer which is not required to be verified by the Supplier under any provision of this Contract

13.14 This indemnity will remain as uncapped because the potential liability and losses which could be incurred by the Buyer as a result of a breach of third-party IPRs are potentially vast and are not quantifiable. If the Supplier can't buy a licence to use a third party's infringed IPRs, the Buyer's entire business could be put at serious risk, as well as the possible claims for damages. This risk is within the full control of the Supplier. This indemnity will stay uncapped.

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

13.15.1 will consult the Buyer on all substantive issues which arise during the conduct of such litigation and negotiations

13.15.2 will take due and proper account of the interests of the Buyer

13.15.3 will consider and defend the claim diligently using competent counsel and in such a way as not to bring the reputation of the Buyer into disrepute

13.15.4 will not settle or compromise the claim without approval (such decision to approve or not will not be unreasonably withheld or delayed)

13.16 If a claim is made in connection with this Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier will immediately notify the Buyer and, at its own expense and subject to prompt approval, use its best endeavours to:

13.16.1 modify the relevant part of the services or deliverables without reducing their functionality or performance, or substitute services or deliverables of equivalent functionality or performance, to avoid the infringement or the alleged infringement, provided that there is no additional cost or burden to the Buyer

13.16.2 buy a licence to use and supply the services or deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Buyer

13.16.3 promptly re perform any responsibilities and obligations to do with this Contract

13.16.4 if the Supplier can't comply with this paragraph within 20 Working Days of receipt of the Supplier's notification the Buyer may terminate this Contract for Material Breach and the Supplier will, on demand, refund the Buyer with all monies paid for the Service or deliverable that is subject to the claim

13.17 The Supplier will have no rights to use any of the Buyer's names, logos or trademarks without prior approval.

13.18 The Supplier will, as an enduring obligation throughout the term and the Call-Off Contract period where any software is used in the provision of the services or information uploaded, interfaced or exchanged with the CCS or Buyer systems, use software and the most up-to-date anti-virus definitions from an industry-accepted antivirus software vendor. It will use the software to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between CCS or the Buyer, and the Supplier).

13.19 If Malicious Software is found, the Supplier will co-operate with the Buyer to reduce the effect of the Malicious Software. If Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, the Supplier will help the Buyer to mitigate any losses and restore the provision of the services to its desired operating efficiency as soon as possible.

13.20 Any cost arising from the actions of the Buyer or Supplier taken in compliance with the provisions of the above paragraph, will be dealt with by the Buyer and the Supplier as follows:

13.20.1 by the Supplier, where the Malicious Software originates from the Supplier software or the Buyer Data while the Buyer Data was under the control of the Supplier, unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier

13.20.2 by the Buyer if the Malicious Software originates from the Buyer Software or the Buyer Data, while the Buyer Data was under the control of the Buyer

14. Buyer Data

- 14.1 The Supplier will not remove any proprietary notices relating to the Buyer Data.
- 14.2 The Supplier will not store or use Buyer Data except where necessary to fulfill its obligations.
- 14.3 If Buyer Data is processed by the Supplier, the Supplier will supply the data to the Buyer as requested and in the format specified by the Buyer.
- 14.4 The Supplier will preserve the integrity of Buyer Data processed by the Supplier and prevent corruption and loss.
- 14.5 The Supplier will ensure that any system which holds any Buyer Data complies with the security requirements described by the Buyer.
- 14.6 The Supplier will ensure that any system on which the Supplier holds any Buyer Data which is protectively marked will be accredited as specified by the Buyer and will comply with:
- 14.6.1 the government security policy framework and information assurance policy
 - 14.6.2 guidance issued by the Centre for Protection of National Infrastructure on Risk Management and Accreditation of Information Systems
 - 14.6.3 the relevant government information assurance standard(s)
- 14.7 Where the duration of this Call-Off Contract exceeds one year, the Supplier will review this accreditation status at least once a year to assess whether material changes have occurred which could alter the original accreditation decision in relation to Buyer Data. If any changes have occurred then the Supplier will resubmit such system for accreditation.
- 14.8 If at any time the Supplier suspects, or has reason to believe, that the Buyer Data has or may become corrupted, lost, breached or sufficiently degraded in any way for any reason, then the Supplier will notify the Buyer immediately and will comply with remedial action proposed by the Buyer.
- 14.9 The Supplier will provide at the request of CCS or the Buyer, any information relating to the Supplier's compliance with its obligations under the Data Protection Act. The Supplier will also ensure that it does not knowingly or negligently fail to do something that places CCS or any Buyer in breach of its obligations of the Data Protection Act.

This is an absolute obligation, not qualified by any other provision of this Call-Off Contract.

14.10 The Supplier agrees to use the appropriate organisational, operational and technological processes and procedures to keep the Buyer Data safe from unauthorised use or access, loss, destruction, theft or disclosure.

15. Document and source code management repository

15.1 The Supplier will comply with any reasonable instructions given by the Buyer as to where it will store documents and source code, both finished and in progress, over the term of this agreement.

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

16. Records and audit access

16.1 The Supplier will allow the CCS (and CCS's external auditor) to access its information and conduct Audits of the services provided under this Call-Off Contract and the provision of Management Information.

17. Freedom of Information (FOI) requests

17.1 The Supplier will transfer any Requests for Information to the Buyer within 2 Working Days of receiving a request for information.

17.2 The Supplier will provide all necessary help reasonably requested by the Buyer so the Buyer can respond to the request for information within the time for compliance set out in section 10 of the Freedom of Information Act or Regulation 5 of the Environmental Information Regulations.

18. Standards and quality

18.1 The Supplier will comply with any standards in this Call-Off Contract and Section 4 (How services will be delivered) of the Framework Agreement, and with Good Industry Practice.

19. Security

- 19.1 The Supplier will, within 5 Working Days of the effective date of this Call-Off Contract, develop, maintain and observe a Security Management Plan and an Information Security Management System (ISMS); which after Buyer approval, will apply during the Contract period. Both the ISMS and the Security Management Plan will comply with the security policy and protect all aspects of the services and all processes associated with the delivery of the Services.
- 19.2 The Supplier will use software and the most up-to-date anti-virus definitions available from an industry accepted anti-virus software vendor to minimise the impact of Malicious Software.
- 19.3 If Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, the Supplier will help the Buyer to mitigate any losses and will restore the services to its desired operating efficiency as soon as possible.
- 19.4 Any cost arising from the actions above will be dealt with as follows:
- 19.4.1 by the Supplier, where the Malicious Software originates from the Supplier software or the Buyer Data while the Buyer Data was under the control of the Supplier, unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier
 - 19.4.2 by the Buyer if the Malicious Software originates from the Buyer Software or the Buyer Data, while the Buyer Data was under the control of the Buyer
- 19.5 The Supplier will immediately notify CCS of any breach of security in relation to CCS's Confidential Information (and the Buyer in relation to any breach regarding Buyer Confidential Information). The Supplier will recover such CCS and Buyer Confidential Information however it may be recorded.
- 19.6 Any system development by the Supplier must also comply with the government's '10 Steps to Cyber Security' guidance, available at:
<https://www.gov.uk/government/publications/cyber-risk-management-a-board-level-responsibility/10-steps-summary>
- 19.7 If the Buyer has any specific security requirements for this project relating to the Buyer's security policy, be shared as in the Call-Off Contract Schedules.

20. Incorporation of terms

20.1 Upon the execution of a Statement of Work (SOW), the terms and conditions agreed in the SOW will be incorporated into this Contract.

21. Managing disputes

21.1 When either party notifies the other of a dispute, the Parties will attempt in good faith to negotiate a settlement immediately.

21.2 Nothing in this procedure will prevent the Parties from seeking any interim order restraining the other party from doing any act or compelling the other party to do any act.

21.3 If the dispute cannot be resolved, either party will be entitled to refer it to mediation in accordance with the procedures below, unless:

21.3.1 the Buyer considers that the dispute is not suitable for resolution by mediation

21.3.2 the Supplier does not agree to mediation

21.4 The procedure for mediation is as follows:

21.4.1 A neutral adviser or mediator will be chosen by agreement between the Parties. If they can't agree on a mediator within 10 Working Days after a request by one party to the other, either party will as soon as possible, apply to the mediation provider or to the Centre for Effective Dispute Resolution (CEDR) to appoint a mediator. This application to CEDR must take place within 12 Working Days from the date of the proposal to appoint a mediator, or within 3 Working Days of notice from the mediator to either party that they are unable or unwilling to act.

21.4.2 The Parties will meet with the mediator within 10 Working Days of the mediator's appointment to agree a programme for the exchange of all relevant information and the structure for negotiations to be held. The Parties may at any stage seek help from the mediation provider specified in this clause to provide guidance on a suitable procedure.

21.4.3 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.

21.4.4 If the Parties reach agreement on the resolution of the dispute, the agreement will be reduced to writing and will be binding on the Parties once it is signed by their duly authorised representatives.

21.4.5 Failing agreement, either party may invite the mediator to provide a non-binding but informative opinion in writing. Such an opinion will be

provided without prejudice and will not be used in evidence in any proceedings relating to this Contract without the prior written consent of both Parties.

21.4.6 If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

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

21.5.1 any technical aspect of the delivery of the digital services

21.5.2 the underlying technology

21.5.3 otherwise is of a financial or technical nature

21.5.4 The request must follow the procedures below. An expert will be appointed by written agreement between the Parties, but if there's a failure to agree within 10 Working Days, or if the person appointed is unable or unwilling to act, the expert will be appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society).

21.6 The expert will act on the following basis:

21.6.1 they will act as an expert and not as an arbitrator and will act fairly and impartially

21.6.2 the expert's determination will (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties

21.6.3 the expert will decide the procedure to be followed in the determination and will be requested to make their determination within 30 Working Days of their appointment or as soon as reasonably practicable and the Parties will help and provide the documentation that the expert needs for the determination

21.6.4 any amount payable by one party to another as a result of the expert's determination will be due and payable within 20 Working Days of the expert's determination being notified to the Parties

21.6.5 the process will be conducted in private and will be confidential

21.6.6 the expert will determine how and by whom the costs of the determination, including their fees and expenses, are to be paid

21.7 Without prejudice to any other rights of the Buyer under this Contract, the obligations of the Parties under this Contract will not be suspended, ceased or delayed by the reference of a dispute submitted to mediation or expert determination and the

Supplier and the Supplier Staff will comply fully with the Requirements of this Contract at all times.

22. Termination

22.1 The Buyer will have the right to terminate this Contract at any time by giving notice to the Supplier as per notice period in Part A, the Order Form. The Supplier's obligation to provide the services will end on the date in the Buyer's notice.

22.2 The minimum notice period (expressed in Working Days) to be given by the Buyer to terminate under this clause will be the number of whole days that is 20% of the total duration of the final SOW to be performed under this Contract. This is up to 30 Working Days.

22.3 Partial days will be discounted in the calculation and the duration of the SOW will be calculated in Working Days.

For example, if the length of the SOW is 10 Working Days: 20% of the SOW is 2 days. The notice period is 2 Working Days; or if the length of the SOW is 62 Working Days, 20% of the SOW is 12.4. The notice period is 12 Working Days.

22.4 The Parties acknowledge and agree that:

22.4.1 the Buyer's right to terminate under this clause is reasonable in view of the subject matter of this Contract and the nature of the Service being provided

22.4.2 the Contract Charges paid during the notice period given by the Buyer in accordance with this clause are a reasonable form of compensation and are deemed to fully cover any costs or losses incurred by the Supplier which may arise either directly or indirectly as a result of the Buyer exercising the right to terminate under this clause without cause

22.5 The Buyer will have the right to terminate this Contract at any time with immediate effect by written notice to the Supplier if:

22.5.1 the Supplier commits a Supplier default and if the Supplier default can't, in the opinion of the Buyer, be remedied

22.5.2 the Supplier default is a Material Breach of this Contract

22.6 Either party may terminate this Contract at any time with immediate effect by written notice to the other if:

22.6.1 the other party commits a Material Breach of any term of this Contract (other than failure to pay any amounts due under this Contract) and, if such breach is

remediable, fails to remedy that breach within a period of 15 Working Days of being notified in writing to do so

22.6.2 an insolvency event of the other party occurs, or the other party ceases or threatens to cease to carry on the whole or any material part of its business

22.6.3 a Force Majeure Event occurs for a period of more than 15 consecutive calendar days

22.7 If a Supplier insolvency event occurs, CCS is entitled to terminate this Call-Off Contract.

23. Consequences of termination

23.1 If a Buyer terminates this Contract within the price validity period stated in the Further Competition and there is outstanding work, the Buyer may approach the next 'available and best placed' supplier to form a Contract, without having to restart the procurement exercise. If the Buyer contracts with the next available and best placed supplier, the Supplier will comply with Clause 27.

24. Supplier's status

24.1 The Supplier is an independent Contractor so no Contract of employment or partnership is created with the Buyer. Neither party is authorised to act in the name of, or on behalf of, the other party.

25. Notices

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

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

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

25.3 The address and email address of each party will be the address and email address in the Order Form.

26. Exit plan

26.1 The Buyer and the Supplier will agree an exit plan during the Contract period to enable the Supplier deliverables to be transferred to the Buyer ensuring that the Buyer has all the code and documentation required to support and continuously develop the Service with Buyer resource or any third party as the Buyer requires. The Supplier will update this plan whenever there are material changes to the services. A Statement of Work may be agreed between the Buyer and the Supplier to specifically cover the exit plan.

27. Help at retendering and handover to replacement supplier

27.1 When requested, the Supplier will (at its own expense) help the Buyer to migrate the services to a replacement Supplier to ensure continuity of the services. Such help may include Supplier demonstrations of the existing code and development documents, software licences used and Buyer approval documents. The Supplier will also answer Service and development-related clarification questions.

27.2 Within 10 Working Days of a request by the Buyer, the Supplier will provide any information needed by the Buyer to prepare for any procurement exercise or to facilitate any potential replacement Supplier undertaking due diligence. The exception to this is where such information is deemed to be Commercially Sensitive Information, in which case the Supplier will provide the information in a redacted form.

28. Contract changes

28.1 All changes to this Contract must be made in accordance with clause 29 - Changes to services and the procedures described in this clause.

28.2 Either party may request a Contract change by completing and sending a draft Contract Change Note in the form in Schedule 4 of Part B - The Schedules ('the Contract Change Note') to the other party giving sufficient information to enable the other party to assess the extent of the change and any additional cost that may be incurred. The party requesting the Contract change will bear the costs of preparation of the Contract Change Note. Neither party will unreasonably withhold or delay consent to the other party's proposed changes to this Call-Off Contract.

28.3 Due to the agile-based delivery methodology recommended by the Framework Agreement, it may not be possible to exactly define the consumption of services over the duration of the Call-Off Contract in a static Order Form. The Supplier should state the initial value of all services that are likely to be consumed under the Call-Off Contract.

29. Changes to services

29.1 It is likely that there will be changes to the scope of the Services during the Contract period. Agile projects have a scope that will change over time. The detailed scope (eg defined in user stories) can evolve and change during the Contract Period; the Buyer and Supplier must agree in the SOW whether or not the the Supplier needs to agree these changes together with the Buyer or can do so independently.

29.2 Any changes to the high-level scope of the Services must be agreed by both the Buyer and Supplier. The Supplier will consider any request by the Buyer to change the scope of the Services, and may agree to such request.

30. Force Majeure

30.1 Neither party will be liable to the other party for any delay in performing, or failure to perform, its obligations under this Contract (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure event. Each party will use all reasonable endeavours to continue to perform its obligations under this Contract for the length of a Force Majeure event. If a Force Majeure event prevents a party from performing its obligations under this Contract for more than 15 consecutive calendar days, the other party may terminate this Contract with immediate effect by notice in writing.

31. Entire agreement

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

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

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

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

32. Liability

32.1 Neither party excludes or limits its liability for:

32.1.1 death or personal injury

32.1.2 bribery or fraud by it or its employees

32.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982

32.1.4 any liability to the extent it cannot be excluded or limited by Law

32.2 The Supplier's total aggregate liability relating to any of the indemnities mentioned above will be unlimited.

32.3 Subject to the above, each party's total aggregate liability relating to all losses in connection with this agreement will be limited due to a default:

32.3.1 which occurs in the first Contract year, to the greater of the sum of £100,000 or a sum equal to 125% of the estimated Year 1 Management Charge

32.3.2 resulting in direct loss or damage to physical property (including any technical infrastructure, assets or Equipment) of the other party, to the sum of £1,000,000 in each Contract year in which the default occurs, unless otherwise stipulated by the Buyer in a Further Competition procedure

32.3.3 which occurs in the first 6 months, to the greater of the sum of £500,000 or a sum equal to 200% of the estimated Contract Charges for the first six months

32.3.4 which occurs during the remainder of the Contract period, to the greater of the sum of £500,000 or an amount equal to 200% of the Contract Charges paid, due or which would have been payable under this Contract in the 6 months immediately preceding the event giving rise to the liability

32.3.5 which occurs after the end of the Contract period, to the greater of the sum of £500,000 or an amount equal to 200% of the Contract Charges paid, due or which would have been payable under this Contract in the 6 months immediately before the end of the Contract period

32.4 Subject to the above paragraphs within this clause, in no event will either party be liable to the other for any:

32.4.1 loss of profits

32.4.2 loss of business

32.4.3 loss of revenue

32.4.4 loss of or damage to goodwill

32.4.5 loss of savings (whether anticipated or otherwise)

32.4.6 any indirect, special or consequential loss or damage

32.5 The Supplier will be liable for the following types of loss which will be regarded as direct and will be recoverable by the Buyer:

32.5.1 the additional operational or administrative costs and expenses arising from any Material Breach

32.5.2 any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any law

32.6 No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by, or on behalf of, the Buyer to any document or information provided by the Supplier in its provision of the services, and no failure of the Buyer to discern any defect in or omission from any such document or information will exclude or limit the obligation of the Supplier to carry out all the obligations of a professional Supplier employed in a client and Buyer relationship.

32.7 Unless otherwise expressly provided, the obligations of the Buyer under this Contract are obligations of the Buyer in its capacity as a Contracting counterparty and nothing in this Contract will be an obligation on, or in any other way constrain the Buyer in any other capacity, nor will the exercise by the Buyer of its duties and powers in any other capacity lead to any liability under this Contract on the part of the Buyer to the Supplier.

32.8 For the avoidance of doubt, any liabilities which are unlimited will not be taken into account for the purposes of establishing whether any limits relating to direct loss or damage to physical property within this clause have been reached.

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

33. Waiver and cumulative remedies

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

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

34. Fraud

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

34.2 If the Supplier commits any fraud relating to a Framework Agreement, this call-off Contract or any other Contract with the government:

34.2.1 the Buyer may terminate the Call-Off Contract

34.2.2 CCS may terminate the Framework Agreement

34.2.3 CCS and the Buyer may recover in full from the Supplier

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

35. Prevention of bribery and corruption

35.1 The Supplier will not commit any Prohibited Act.

35.2 The Buyer and CCS will be entitled to recover in full from the Supplier and the Supplier will on demand compensate CCS and the Buyer in full from and against:

35.2.1 the amount of value of any such gift, consideration or commission

35.2.2 any other loss sustained by CCS and the Buyer in consequence of any breach of this clause

Schedule 5 Optional Buyer terms and conditions

Schedule 5.1. Contract Charges

For each individual Statement of Work, one of the charging methods described below will be used.

Sch5.1.1 Capped time and material Charges

Sch5.1.1.1 Where services are being delivered on a capped time and materials basis, the provisions of this paragraph and the time and material rates on the Digital Marketplace as specified in Section 8 of the Framework Agreement will apply.

Sch5.1.1.2 Capped time and materials Contract Charges will be calculated on a daily basis in accordance with the agreed relevant rates for Supplier staff and at the respective time and material rates for every day, or pro rata for every part of a day, that Supplier staff are actively performing the services.

Sch5.1.1.3 The Supplier will continue at its own cost and expense to provide the services even where the maximum price has been exceeded.

Sch5.1.1.4 The Buyer will have no obligation or liability to pay for the cost of any services delivered relating to this order after the maximum price has been exceeded.

Sch5.1.2 Time and material Charges

Sch5.1.2.1 Where services for this release are being delivered on a time and materials basis, Contract Charges will be calculated on a daily basis in accordance with the agreed relevant rates for such Supplier staff at the respective time and material rates for every day, or pro rata for every part of a day, that the Supplier staff are actively performing the services as described in Section 8 of the Framework Agreement.

Sch5.1.2.2 The Supplier will provide a detailed breakdown of any time and materials Contract Charges with sufficient detail to enable the departmental Buyer to verify the accuracy of the time and material Contract Charges incurred.

Sch5.1.2.3 Risks or contingencies will be deemed included in the Contract Charges relating to the provision of services for which time and materials Contract Charges apply. The Supplier will keep accurate records of the time spent by

the Supplier staff in providing the services and will provide records for the Buyer for inspection at all reasonable times on request.

Sch5.1.3 Price-per-story-point Charges

Sch5.1.3.1 Where services are being delivered on a price-per-story-point basis, the Contract Charges in table TBC will be due when a story has been accepted as agreed by the Parties.

Sch5.1.3.2 Story point Contract Charges will be calculated on a daily basis as agreed by the relevant rates for such Supplier staff at the respective time and material rates for every day, or pro rata for every part of a day, that the Supplier staff are actively performing the services.

Sch5.1.4 Fixed price

Sch5.1.4.1 Where services for this release are being delivered on a fixed price basis, the Contract Charges in table TBC will apply.

Sch5.1.4.2 The Parties agree that the following assumptions and representations will apply relating to delivery of the services on a fixed price basis as per the prices in table TBC: insert full details of any information, assumptions, representations, risks and contingencies which the Parties are relying on in relation to the prices in the table at paragraph XXX

Schedule 5.2. Deed of guarantee

This deed of guarantee is made on [insert date date/month/year] 20[]
between:

1. (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

and

(2) THE MINISTER FOR THE CABINET OFFICE as represented by Crown Commercial Service, (CCS, also known as the 'Authority') a trading fund of the Cabinet Office whose offices are on the 9th Floor, The Capital, Old Hall Street, Liverpool, L3 9PP (**'Beneficiary'**)

Whereas:

- (A) The guarantor has agreed, in consideration of CCS entering into the Call-Off Contract with the supplier, to guarantee all of the supplier's obligations under the Call-Off Contract.
- (B) It is the intention of the Parties that this document be executed and take effect as a deed.

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

DEFINITIONS AND INTERPRETATION

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

'CCS'	means [the Authority] [insert name of the Buyer with whom the Supplier enters into a Call-Off Contract] and 'Beneficiaries' will be construed accordingly
'Call-Off Contract'	means [the Guaranteed Agreement] made between CCS and the Supplier on [insert date]
'Guaranteed Obligations'	means all obligations and liabilities of the Supplier to CCS under the Call-Off Contract together with all obligations owed by the Supplier to CCS that are supplemental to, incurred under, ancillary to or calculated by reference to the Call-Off Contract

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

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

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

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

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

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

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

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

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

Guarantee and indemnity

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

The guarantor irrevocably and unconditionally undertakes to pay to CCS all monies which are payable by the Supplier under the Call-Off Contract.

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

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

As a separate and independent obligation and liability, the guarantor irrevocably and unconditionally undertakes to compensate and keep CCS compensated on demand

against all losses and expenses of whatever nature, whether arising under statute, Contract or at common law, if any obligation guaranteed by the guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the guarantor's liability will be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

Obligation to enter into a new Contract

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

DEMANDS AND NOTICES

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

[Address of the Guarantor in England and Wales]

[Email address of the Guarantor representative]

For the Attention of [insert details]

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

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

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

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

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

BENEFICIARY'S PROTECTIONS

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

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

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

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

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

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

- obtain judgment against the Supplier or the Guarantor or any third party in any court
- make or file any claim in a bankruptcy or liquidation of the Supplier or any third party
- take any action against the Supplier or the Guarantor or any third party

- resort to any other security or guarantee or other means of payment.

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

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

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

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

GUARANTOR INTENT

Without prejudice to the generality of Clause 5 (CCS's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee will extend from time to time to any variation, increase, extension or addition of or to the Call-Off Contract and any associated fees, costs or expenses.

RIGHTS OF SUBROGATION

The Guarantor will, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, 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
- to prove in the liquidation or insolvency of the Supplier

The Guarantor will do this in accordance with CCS's written instructions and will hold any amount recovered as a result of the exercise of such rights on trust for CCS and pay the same to CCS on first demand.

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

DEFERRAL OF RIGHTS

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

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

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

REPRESENTATIONS AND WARRANTIES

The Guarantor hereby represents and warrants to CCS that:

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

- the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets
- all governmental and other authorisations, approvals, licences and consents, required or desirable

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

PAYMENTS AND SET-OFF

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

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

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

GUARANTOR'S ACKNOWLEDGEMENT

The Guarantor warrants, acknowledges and confirms to CCS that it has:

- not entered into this Deed of Guarantee in reliance upon CCS not being induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of CCS (whether express or implied and whether following statute or otherwise) which is not in this Deed of Guarantee

ASSIGNMENT

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

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

SEVERANCE

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the

remainder of the provisions will continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

THIRD-PARTY RIGHTS

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

GOVERNING LAW

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

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

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

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

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

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

EXECUTED as a DEED by

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

Director

Director/Secretary

Schedule 5.3. Agency

The Buyer (as principal) has authorised [NAME OF AGENT] to act as agent on their behalf. The Buyer as principal remains liable for all of the Buyer obligations under this Call-Off Contract entered into on its behalf by the agent.