



Crown  
Commercial  
Service



Government  
Communication  
Service

# Campaign Solutions Framework Agreement

Dated: XX/XX/XXXX

Framework Reference: RM3774

**CROWN COMMERCIAL SERVICE**

and

**[AGENCY NAME]**

## TABLE OF CONTENT

<u>1.</u>	<u>The Appointment</u>
<u>2.</u>	<u>Services offered</u>
<u>3.</u>	<u>How Services will be bought (Call-Off Process)</u>
<u>4.</u>	<u>Framework arrangement and award procedure</u>
<u>5.</u>	<u>The Agency's obligations under the framework</u>
<u>6.</u>	<u>Management information and management charges</u>
<u>7.</u>	<u>Record keeping, confidentiality and transparency</u>
<u>8.</u>	<u>General governance</u>
<u>9.</u>	<u>Framework agreement termination and suspension</u>
<u>10.</u>	<u>Insurance and liability</u>
<u>11.</u>	<u>Variations to this framework agreement</u>
<u>12.</u>	<u>Transfer and Sub-contracting</u>
<u>13.</u>	<u>Guarantees</u>
<u>14.</u>	<u>Rights of third parties</u>
<u>15.</u>	<u>Other provisions</u>
<u>16.</u>	<u>Intellectual property right and indemnity</u>
<u>17.</u>	<u>Complaints handling and resolution</u>
<u>1.</u>	<u>FRAMEWORK SCHEDULE 1: DEFINITIONS AND INTERPRETATION</u>
<u>A.</u>	<u>DEFINED TERMS</u>
<u>B.</u>	<u>INTERPRETATION</u>
<u>2.</u>	<u>FRAMEWORK SCHEDULE 2: KEY SUB-CONTRACTORS</u>
<u>3.</u>	<u>FRAMEWORK SCHEDULE 3: CHARGING STRUCTURE</u> <u>Annex 1: Rates and Prices</u>
<u>4.</u>	<u>FRAMEWORK SCHEDULE 4: LETTER OF APPOINTMENT AND CALL-OFF</u> <u>TERMS</u> <u>Annex A</u> <u>Annex B</u>
<u>5.</u>	<u>FRAMEWORK SCHEDULE 5: MI REPORTING TEMPLATE</u>
<u>6.</u>	<u>FRAMEWORK SCHEDULE 6: ANNUAL SELF-AUDIT CERTIFICATE</u>
<u>7.</u>	<u>FRAMEWORK SCHEDULE 7: COMMERCIALLY SENSITIVE</u> <u>INFORMATION</u>
<u>8.</u>	<u>FRAMEWORK SCHEDULE 8: FRAMEWORK MANAGEMENT</u>
<u>9.</u>	<u>FRAMEWORK SCHEDULE 9: GUARANTEE</u>
<u>10.</u>	<u>FRAMEWORK SCHEDULE 10: TENDER</u>
<u>11.</u>	<u>FRAMEWORK SCHEDULE 11: VARIATION FORM</u>

## 1. THE APPOINTMENT

<b>Parties:</b>	The Minister for the Cabinet Office, represented by the Crown Commercial Service, 9th Floor, The Capital, Old Hall Street, Liverpool, L3 9PP (“ <b>CCS</b> ”)
	[XXX, ADDRESS, COMPANY REGISTRATION NUMBER] (the “ <b>Agency</b> ”)
<b>Appointment</b> :	Subject to the terms of this Framework Agreement (RM3774), CCS appoints the Agency, as a supplier of campaign solution services who can bid for Call-Off Contracts as outlined in Section 3 (How Services will be bought (Call-Off Process)).
<b>Appointment begins at:</b>	[Date] (the “ <b>Appointment Date</b> ”)
<b>Appointment expires at:</b>	[Date 4 years after the Appointment Date] (the “ <b>Expiry Date</b> ”)

- 1.1 On [Date], Crown Commercial Service (CCS) placed a contract notice [number] in the Official Journal of the European Union seeking expressions of interest from providers of campaign solution services to Clients under a framework arrangement.
- 1.2 On [Date] CCS issued the Invitation to Tender for the provision of campaign solution services.
- 1.3 On the basis of the Agency’s Tender, CCS selected the Agency to provide Services to Clients from time to time in accordance with this Framework Agreement. The Agency is one of a number of agencies appointed to this Framework Agreement.
- 1.4 This Framework Agreement sets out:
  - 1.4.1 how Orders will be awarded,
  - 1.4.2 the main terms and conditions for any Call-Off Contract which Clients may agree under this Framework Agreement, and
  - 1.4.3 the obligations of the Parties during and after the Term of this Framework Agreement
- 1.5 The Parties agree there is no obligation for any Client to place any Orders under this Framework Agreement during the Term.
- 1.6 By signing this Framework Agreement, the Agency agrees to comply with all the terms of this Framework Agreement. In consideration of the Agency performing its obligations

under this Framework Agreement, CCS agrees to pay and the Agency agrees to accept on the signing of this Framework Agreement the sum of £1, receipt of which is hereby acknowledged by the Agency.

**Signed by, or on behalf of, the Agency:**

**Signed by, or on behalf of, CCS:**

Signature:

Signature:

Name:

Name:

Position:

Position:

Date:

Date:

## **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 Agency is required to provide to CCS under this Framework Agreement and to provide a description of what the Services entail, together with any specific standards applicable to the Services.

2.1.2 The Agency shall deliver innovative, best practice communications to achieve Government's goals. These shall be in line with the Government Communication Service professional standards, as referenced in the Government Communications Plan. The Government Communication Plan is updated annually and CCS shall ensure that the Agency is notified when the plan is updated. The 2016/2017 Government Communications Plan can be found at <https://gcs.civilservice.gov.uk/wp-content/uploads/2016/05/gov-comms-plan-2016-17.pdf>.

2.1.3 The Agency shall manage and deliver fully integrated campaigns, either by delivering services in-house or by Sub-Contracting.

#### **2.2 Scope**

2.2.1 The Agency shall be required to deliver Services throughout the United Kingdom and international locations.

2.2.2 For each Call-Off under this Framework Agreement the Client will define the Brief in accordance with the Call-Off Process, which is in Section 3 of this Framework Agreement.

2.2.3 The Agency shall ensure all Sub-Contracting arrangements comply with Section 12 of this Framework Agreement.

2.2.4 The Agency may be required to offer coverage on an international basis and this must include the ability for campaign solutions planning as required, in addition to the implementation of campaign solutions.

## 2.3 Clients

2.3.1 This Framework Agreement covers requirements across a wide and diverse Client base - the Agency shall support the varied requirements and budgets of all Clients irrespective of size.

2.3.2 Clients of this Framework Agreement shall be based throughout the United Kingdom and may include international locations.

## 2.4 Mandatory Requirements

2.4.1 For each Call-Off Contract, the Client will provide a Brief detailing what is needed from the Agency and the outcome to be achieved. The Agency shall follow the Further Competition Procedure under Clause 3.10.

2.4.2 The Agency shall offer coverage on a national, regional and local basis within the United Kingdom.

## 2.5 Client Briefs

2.5.1 The Agency shall adopt and accept a flexible approach to the management of the Brief and both electronic and paper based Briefs shall be accepted.

2.5.2 The Agency shall only commence work on campaign solutions Briefs when both Parties have signed the relevant Letter of Appointment or SOW (as appropriate).

## 2.6 Required Services

2.6.1 Account Management: The Agency shall provide comprehensive account management services to the Client. The Agency shall:

- a) allocate specific named account teams for all Briefs regardless of size
- b) provide each Client with a Board Account Director (or equivalent level) Client lead
- c) follow the Call-Off Process, in Section 3 (How Services will be bought (Call-Off Process)).
- d) have a clear and simple escalation process for the Clients and Sub-Contractors
- e) provide detailed, accurate and timely invoicing of all costs as outlined in Framework Schedule 3 (Charging Structure) of this Framework Agreement and any Call-Off Contract.

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

- a) provide Management Information detailing work carried out by the Agency on the basis of the billable charged hours as outlined in Section 3 (How Services will be bought (Call-Off Process))

- b) campaign related reporting as specified, to include measures on effectiveness and efficiency (these shall be outlined in each Brief)
- c) reporting to demonstrate progress and effectiveness (as defined by the Client).

2.6.3 Evaluation and measurement: The Agency shall provide evaluation and measurement of campaign performance, this may include:

- a) recording, measuring and reporting of Agency outputs relevant to the campaign
- b) ensuring all Agency work is in line with the Government Communication Service evaluation framework (which can be accessed here: <https://gcs.civilservice.gov.uk/guidance/evaluation/tools-and-resources/>)
- c) being able to reasonably adjust live campaign activities to take account of ongoing evaluation and measurement results.

2.6.4 The Agency may be required to:

- a) work collaboratively on projects with other Clients and/or other Agencies of this Framework Agreement, and
- b) manage multiple relationships with the Client and Client-related organisations at the Call-Off Contract level to ensure greater value and best results for the Client.

## 2.7 Specialist services

The Agency shall fulfill one or more of the specialist services obligations set out below as required by a Client under the relevant Call-Off Contract.

2.7.1 Strategy development. The Agency shall provide strategy development; this may include, but is not limited to:

- a) provision of detailed reports and recommendations
- b) marketing audits, competitor and context analysis
- c) target audience identification and analysis
- d) trend forecasting
- e) behavioural analysis and modelling, including social psychology and neuroscience
- f) insight generation
- g) strategic planning of content/messaging (not to include media/channel planning)
- h) stakeholder analysis, mapping and strategy.

2.7.2 Creative for campaigns. The Agency shall provide creative for campaigns; this may include, but is not limited to:

- a) creative direction and management

- b) the development of creative propositions, inclusive of relevant research
- c) development of campaign strategy, identity, core messages and values
- d) management of an end to end process through creative ideas, pre-production, production and play-out.

2.7.3 Digital marketing and social media. The Agency shall provide digital marketing and social media; this may include, but is not limited to:

- a) digital consultancy
- b) web design, development and build
- c) content creation and management (including information architecture)
- d) digital advertising:
  - standard-rich media
  - video
  - mobile
- e) Short Message Service (SMS) / Multimedia Messaging Service (MMS)
- f) Search Engine Optimisation (SEO) (including strategy)
- g) usability testing
- h) social media execution/implementation
- i) viral marketing
- j) Electronic Customer Relationship Management (eCRM) / loyalty Interactive content and solutions.

2.7.4 Public relations. The Agency shall provide public relations; this may include, but is not limited to:

- a) the development of public relations themes, strategies, plans and tactics across relevant campaigns
- b) the implementation of campaign public relations activity, online and offline (uniquely or in conjunction with other organisations working on the same campaign)
- c) message definition and articulation
- d) press release writing and distribution
- e) content development/management (seeding & syndication, blogging, social networks, video-sharing, forums)
- f) user communities – build, manage, and respond
- g) reputation management (listening, monitoring)
- h) crisis planning and communications

- i) management of key opinion leaders/opinion-formers
- j) management of interaction with relevant journalists and media channels.

2.7.5 Direct marketing. The Agency shall provide direct marketing; this may include, but is not limited to:

- a) direct marketing campaign planning
- b) customer journey mapping (including relevant trends)
- c) creative development (online & offline)
- d) content creation
- e) field and experiential marketing (strategic & tactical)
- f) data strategy and management
- g) data capture & database build and management:
  - data warehousing
  - Customer Relationship Management (CRM)
  - electronic Customer Relationship Management (eCRM)
  - system build
  - database interrogation
- h) data management and data analysis:
  - profiling
  - segmentation
  - predictive modelling
  - data mining
  - data cleansing
  - address management
  - management
  - maintenance of mailing lists including the development
  - manage permission controls
- i) ability to sell and buy accurate mailing lists
- j) inbound and outbound mail
- k) email build
- l) inbound and outbound email broadcast
- m) design of emails



- n) Short Message Service (SMS) and Multimedia Messaging Service (MMS) email marketing
- o) fulfilment services. The Agency may be required to offer fulfilment services to provide an entire campaign on behalf of the Client.

2.7.6 Partnership marketing. The Agency shall provide partnership marketing; this may include, but is not limited to:

- a) management of one-off partner programmes, including high profile partners (individuals and institutions)
- b) management of bespoke or highly technical partnership programmes
- c) implementation and leveraging partner activity
- d) designing and managing partner acquisition and retention programmes
- e) working with media owners to generate content and programming for mutual benefit
- f) sponsorship consultancy and strategy development
- g) implementation and communication of sponsorship activity.

## 2.8 Key Performance Indicators (KPIs)

2.8.1 The KPIs listed below are how CCS will monitor and manage the Agency's overall performance under this Framework 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 Agency in accordance with Section 11 (Variations to the Framework Agreement).

2.8.3 The Agency shall comply with all its obligations related to KPIs set out in this Framework Agreement including Section 6 (Management Information and Management Charges) 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 Framework Agreement, including under Clause 9.2, if a Persistent Failure occurs, the Agency 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 Agency, and the Agency agrees 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 Agency will be required to implement any Approved Improvement Plan, as soon as reasonably practicable.
- b) CCS shall be entitled to require the Agency, and the Agency agrees 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 Agency requesting such meetings.

- c) CCS shall be entitled to serve an Improvement Notice on the Agency and the Agency 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 Agency either:

- a) fails to implement such requirements for improvement as set out in the Improvement Notice; or
- b) fails to implement an Improvement Plan Approved by CCS;

then (without prejudice to any other rights and remedies of termination provided for in this Framework Agreement), CCS shall be entitled to terminate this Framework Agreement for material Default.

Key Performance Indicator (KPI)	KPI Target	Measured by
<b>1. Framework management</b>		
1.1 Management Information (MI) returns: All MI returns to be returned to CCS by the 7th Working Day 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 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 Agency self-audit certificate sent to CCS in accordance with the Framework 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
<b>2. Operational efficiency/price savings</b>		
2.1 The Agency to deliver against the Agency Action Plan to derive further cost savings over the Framework	100%	Confirmation by CCS of the cost savings achieved by the dates identified in the Agency Action Plan

Period via continuous improvement and innovation		
<b>3. Demand management services</b>		
3.1 The Agency to deliver against the Agency Action Plan to derive further cost savings over the Framework Period continuous improvement and innovation	100%	Confirmation by CCS of the cost savings achieved by the dates identified in the Agency Action Plan
<b>4. Customer satisfaction</b>		
4.1 Services to be provided under Call-Off Contracts to the satisfaction of Clients	80%	Confirmation by CCS of the Agency's performance against customer satisfaction surveys

### 3. HOW SERVICES WILL BE BOUGHT (CALL-OFF PROCESS)

#### Overview

- 3.1 This Section sets out the Call-Off Process for all Clients and Agencies to follow.
- 3.2 CCS reserves the right to change this Call-Off Process.
- 3.3 All Clients listed under the OJEU Contract Notice may award a Call-Off Contract under this Framework Agreement.
- 3.4 The Client may appoint an agent to act on their behalf, this includes completing this Call-Off Process.
- 3.5 CCS is not responsible for the actions of any Client.

#### Client reserves the right not to award

- 3.6 A Call-Off Process may be cancelled at any time. The Client is not obliged to award any Call-Off Contract.
- 3.7 At any time during the Further Competition Procedure, the Client may go back to any previous stage in the process and amend requirements.
- 3.8 The Agency may ask clarification questions relating to the Client's requirements. The Client will specify how clarification questions can be asked and when the clarification period will close. Questions and responses will be anonymised and made available to all Framework Agencies.

#### How services will be bought

- 3.9 The Client shall award a Call-Off Contract in accordance with the Further Competition Procedure as set out in Clause 3.10 below.

### 3.10 Further Competition Procedure

3.10.1 **Develop a Brief.** The Client shall develop a Brief detailing what is needed from the Agency and the outcome that the Agency shall be required to deliver. As a minimum the Brief must include:

- a) an outline of the business challenge/issue, including any known targets
- b) details of any mandatory activities, channels or specialist services that should be included within any proposed solution
- c) the evaluation method and criteria for assessing Framework Agencies against the Brief, based on the Further Competition Award Criteria together with a timetable for the evaluation process
- d) a request for interested Framework Agencies to respond
- e) the Agency's Proposal due date.

3.10.2 The Client is advised but not mandated to include the below in the Brief:

- a) a budget range
- b) geographical location of work (if required)
- c) any security clearances needed
- d) a clarification period for Agencies to ask questions about the Brief. The time frame for this clarification period shall be outlined in the Brief.
- e) any other information that the Client considers necessary to enable Agencies to submit a Proposal.

3.10.3 The Client is advised to engage with Framework Agencies before starting the below stages, including providing preliminary details of the requirement for Framework Agency feedback.

3.10.4 The Client shall undertake the required stage (Clause 3.10.4 Written Proposal) and may choose to undertake one or more of the optional stages set out below:

3.10.5 **Pre-Market Engagement (Recommended but Optional).** If a Client chooses to undertake pre-market engagement the Client:

- a) shall send the draft Brief to all Framework Agencies asking for a response for the purposes of assisting with market engagement, as detailed within the Brief
- b) may hold a market engagement event where they shall invite all Framework Agencies, in person or online, to develop the Brief
- c) may choose to update the Brief and re-issue the Brief to all Framework Agencies

3.10.6 Where a Client chooses to undertake pre-market engagement the Agency may respond to the Client. The response may include detail about any industry developments which could affect the Client's business need.

3.10.7 **Agency Shortlisting (Recommended but Optional).** If a Client chooses to undertake agency shortlisting the Client:

- a) shall send the Brief to all Framework Agencies.
- b) shall send questions relating to the requirements set out in the Brief to Framework Agencies which require a “Yes” or “No” response (the “Shortlisting Questions”) and shall indicate the timeframe in which these must be completed.
- c) shall only proceed with Framework Agencies that have responded ‘Yes’ to all the Shortlisting Questions to the next stage of the process.

3.10.8 Where a Client chooses to undertake agency shortlisting the Agency:

- a) shall respond to the Shortlisting Questions answering “Yes” or “No”.
- b) may be unable to proceed to the next Stage of process where they have failed to answer the Shortlisting Questions or provided a “No” response.

3.10.9 **Written Proposal (Required).** The Client shall undertake the written Proposal stage for all Call-Off Contracts under this Framework Agreement. The Client:

- a) shall send the Brief to all Framework Agencies (or only those shortlisted agencies if the Client has undertaken agency shortlisting under clause 3.10.2 )
- b) shall score the Agency’s Proposal against the evaluation method and scoring system outlined in the Brief.

3.10.10 During the undertaking of the written Proposal stage the Agency:

- a) shall submit their written Proposal in line with the requirements in the Client’s Brief including timeframe and format.
- b) shall be required to demonstrate how they will deliver the fully integrated solution, 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 solution. Where an Agency declares that it intends to Sub-Contract any element(s) of the Services, the Agency shall be required to clearly state in its response:
  - The name of the Sub-Contractor(s)
  - The Companies House Registration number of the Sub-Contractor(s)
  - The registered address of the Sub-Contractor(s) and the address of the premises from where the services will be delivered
  - Details of the services that will be Sub-Contracted
  - the estimated value of the work that will be Sub-Contracted

3.10.11 **Further Shortlisting (Recommended but Optional).** If a Client chooses to undertake further shortlisting the Client shall:

- a) set out in the Brief sent to all Framework Agencies the evaluation method and scoring system to be used for shortlisting

- b) conduct a quality assessment of the written Proposal in line with the shortlisting evaluation method and scoring system outlined in the Brief
- c) only proceed with those Framework Agencies who have been successfully shortlisted in accordance with the evaluation method and scoring system outlined in the Brief.

3.10.12 Where a Client chooses to undertake further shortlisting the Agency shall address the shortlisting requirements in its written Proposal.

3.10.13 **Pitching the proposal (Recommended but Optional).** If the Client chooses to undertake a pitching stage, the Client shall:

- a) specify in the Brief that the written Proposal must be supported by a further submission in the form of:
  - a presentation;
  - a face to face pitch; or
  - such other submission as the Client may specify,
- b) score the Agency's further submission against the evaluation method and scoring system outlined in the Brief, and

3.10.14 If the Client chooses to undertake a pitching stage, the Agency shall provide the further submission in accordance with the requirements in the Client's Brief.

3.10.15 The Client shall ensure that the Further Competition Procedure used is proportionate to the complexity and value of the Client's Brief.

3.10.16 The Client shall award a Call-Off Contract to the successful Framework Agency in accordance with the methodology set out in the Brief.

3.10.17 At all stages the Client shall notify unsuccessful Framework Agencies and may provide the Framework Agencies with feedback.

3.10.18 An Agency shall inform the Client if at any stage it does not wish to participate in the Further Competition Procedure.

### 3.11 Further Competition Award Criteria

3.11.1 The Client is advised but not mandated to use the GCS evaluation framework found here: <https://gcs.civilservice.gov.uk/guidance/campaigns/guide-to-campaign-planning-2/> The Client has discretion to develop the Further Competition Award Criteria as it deems appropriate.

3.11.2 The Client will evaluate the Agency's Proposal against the following criteria to determine which of the Framework Agencies provides the most economically advantageous solution from the perspective of the Client. For the avoidance of doubt the most economically advantageous solution will not necessarily be the lowest price solution:

<b>Criteria</b>	<b>Percentage Weightings</b>
Quality	60 - 95%
Price	5 - 40%
<b>TOTAL</b>	<b>100%</b>

3.11.3 Weightings and sub-weightings for the evaluation criteria will be set by the Client and must add up to 100%.

#### **4. FRAMEWORK ARRANGEMENT AND AWARD PROCEDURE**

##### **Term of Framework Agreement**

4.1 This Framework Agreement will take effect on the Appointment Date and expire on the Expiry Date, unless it is terminated earlier in accordance with the terms of this Framework Agreement or by Law.

##### **Scope of Framework Agreement**

4.2 This Framework Agreement governs the relationship between CCS and the Agency in respect of the provision of the Services by the Agency to Clients.

4.3 The Framework Agreement allows CCS and each Client to order the Services from the Agency in accordance with the Call-Off Process.

4.4 The Agency acknowledges that there is no obligation whatsoever on CCS or any Client to invite or select the Agency to provide any Services and/or to purchase any Services under this Framework Agreement.

4.5 No undertaking or any form of statement, promise, representation or obligation will be made or deemed to have been made by CCS or any Client in respect of the total quantities or values of the Services to be ordered by them through this Framework Agreement. The Agency acknowledges and agrees that it has not entered into this Framework 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 Client.

##### **Agency's appointment**

4.6 CCS hereby appoints the Agency as a potential provider of the Services to Clients during the Term. This means the Agency is eligible to be considered for the award of Orders for the Services by Clients during the Term.

- 4.7 Where the Agency 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 Agency's obligations under this Framework Agreement.

#### **Non-exclusivity**

- 4.8 The Agency acknowledges that, notwithstanding the provisions of Clause 4.10, in entering into this Framework Agreement no form of exclusivity has been conferred on by CCS or any Client in relation to the provision of the Services.
- 4.9 CCS and Clients are at all times entitled to enter into other contracts and agreements with other agencies for the provision of any or all services which are the same as, or similar to, the Services.

#### **How services will be ordered**

- 4.10 If a Client asks the Agency to provide services which are the same as or similar to the Services without following the Call-Off Process, the Agency shall inform the Client of the existence of this Framework before it supplies those Services. This will give the Client the option of placing an Order via the Framework Agreement.

#### **Renewing or re-tendering existing contracts**

- 4.11 If an Agency is already providing (or is contracted to provide) Services to a Client, and the Client wants to procure related services, the Agency is required to provide the Client with all reasonable information and assistance to help with the procurement of those related services. This is the case whether or not the Agency is able to compete for the related services. The Agency shall provide the relevant Client and any agency bidding for the related services with all reasonable information and assistance to:
- 4.11.1 carry out appropriate due diligence with respect to the provision of the related services
  - 4.11.2 effect a smooth transfer and/or inter-operation between the existing contract and related services
  - 4.11.3 enable the Client to carry out a fair Further Competition Procedure for the related services, and
  - 4.11.4 enable the Client and any agency bidding for the related services to make a proper risk assessment.
- 4.12 The Agency shall respond consistently, fairly and without discrimination to requests for assistance from any agency bidding for the related services.

### **5. THE AGENCY'S OBLIGATIONS UNDER THE FRAMEWORK**

#### **Warranties, representations and undertakings**

- 5.1 The Agency warrants, represents and undertakes to CCS and to each Client 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 Framework Agreement and each Call-Off Contract
  - 5.1.3 this Framework Agreement has been signed by a duly authorised representative of the Agency
  - 5.1.4 in entering into this Framework Agreement and any Call-Off 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 Tender and any other document which resulted in the award to the Agency of a place on the Framework 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 Framework Agreement and/or any Call-Off 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 Framework Agreement and/or any Call-Off 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 3 years prior to the date of this Framework Agreement (or, if the Agency has been in existence for less than 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 Agency's ability to fulfil its obligations under this Framework Agreement or any Call-Off Contract.
- 5.2 The Agency shall promptly notify CCS in writing:
- 5.2.1 of any material detrimental change in the financial standing and/or credit rating of the Agency
  - 5.2.3 if the Agency undergoes a Change of Control, and
  - 5.3.4 provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned.
- 5.3 The Agency is understood to repeat these warranties, representations and undertakings each time it enters into a Call-Off Contract.
- 5.4 If at any time a Party becomes aware that a representation or warranty an Agency 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 Framework Agreement is expressed as a warranty does not preclude CCS's right of termination if the Agency breaches that provision.
- 5.6 The Agency acknowledges and agrees that:
  - 5.6.1 the warranties, representations and undertakings contained in this Framework Agreement are material, and CCS has relied on those warranties, representations and undertakings when entering into this Framework Agreement, and
  - 5.6.2 any Client entering into a Call-Off Contract is also relying on the warranties, representations and undertakings made by the Agency in this Framework Agreement each time it enters into a Call-Off Contract.

### **Prevention of fraud and bribery**

- 5.7 The Agency shall ensure that no person acting on the Agency's behalf commits any Prohibited Act in connection with this Framework Agreement.
- 5.8 If anyone acting on the Agency's behalf does commit a Prohibited Act in connection with this Framework Agreement, CCS may terminate the Framework Agreement.
- 5.9 In such circumstances, the Agency 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 Agency shall:
  - 5.10.1 in relation to this Framework Agreement and each Call-Off 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 Agency shall co-operate with any investigation in connection with the breach (or potential/suspected breach), and allow CCS to audit the Agency'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 Charge payable does not constitute an offence under section 1 of the Bribery Act 2010.

### **Agency conflicts of interest**

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

#### **Framework agreement performance**

- 5.16 The Agency shall perform all its obligations under this Framework Agreement and all Call-Off Contracts entered into with Clients:
- 5.16.1 in accordance with the requirements of this Framework Agreement
  - 5.16.2 in accordance with the terms and conditions of the respective Call-Off 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 Agency identifies any conflict between any of the requirements above, it must inform CCS. The Agency shall then comply with CCS's decision on the resolution of that conflict.

#### **Non-discrimination**

- 5.18 When performing its obligations under this Framework Agreement and any Call-Off Contract, the Agency 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 Agency is responsible for ensuring that Agency Staff adhere to this rule.

### **6. MANAGEMENT INFORMATION AND MANAGEMENT CHARGES**

#### **Management charge**

RM3774 - Campaign Solutions  
Framework Agreement  
Attachment 4  
Version 1

---

© Crown Copyright 2016

- 6.1 The Agency agrees to pay CCS the Management Charge.
- 6.2 CCS will send the Agency Monthly invoices that set out the Management Charge due, based on the MI the Agency has provided.
- 6.3 Invoices will be adjusted to take into account:
  - 6.3.1 any Admin Fee(s) the Agency owes because it provided MI late
  - 6.3.2 any under-payment or overpayment as a result of the application of the Default Management Charge.
- 6.4 Unless agreed otherwise in writing, the Agency shall pay the amount stated in any invoice submitted under Clause 6.2 by BACS, within 30 calendar days of the date of issue of the invoice.
- 6.5 The Management Charge will apply to the full Charges as specified in each and every Order. It will not be varied as a result of any reduction in the Charges due to the application of any deductions made under any Call-Off Contract.
- 6.6 The Agency may not pass through, recharge to, or otherwise recover from any Client in addition to the Charges, the cost of the 0.5% of the Charges payable to CCS for the management of the Framework Agreement, set out in the first limb of the definition of Management Charge.
- 6.7 The Management Charge is exclusive of VAT. The Agency is required to pay VAT on the Management Charge at the rate and in the manner prescribed by Law.
- 6.8 Interest will be payable on any late payments of the Management Charge in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.9 CCS reserves the right to increase the Management Charge at any time after the first Contract Year.

#### **Provision of management information**

- 6.10 The Agency shall provide accurate Management Information (MI) to CCS every Month on the Reporting Date during the Term and thereafter, until all transactions relating to Call-Off Contracts have permanently ceased.
- 6.11 This Section sets out what information is required and how it must be submitted.
- 6.12 The Agency shall also provide such MI as may be required by a Client in accordance with the terms of a Call-Off Contract.
- 6.13 MI will be provided by the Agency with no charge to CCS.
- 6.14 The Agency 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 Agency grants CCS a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to:
  - 6.15.1 use and to share with any Client 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 supplier to CCS for the purposes of the normal operational activities of the Authority and each Client, including administering this Framework Agreement and/or all Call-Off Agreements, 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 Agency shall provide CCS with accurate and complete MI Reports each Month using the MI Reporting Template. The initial MI Reporting Template is set out in Framework Schedule 5.
- 6.18 The MI Report should refer to Orders received and transactions 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 Agency shall provide CCS with an MI Report for each Month even where there are no Orders or transactions to report that Month. This is referred to as a "Nil Return".
- 6.20 In addition, CCS may request that the Agency provides similar MI about any all other services supplied by the Agency to Clients outside the Framework 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 Agency
  - 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 30 calendar days following the date of the notice.
- 6.22 The Agency may not make any amendment to the current MI Reporting Template without Approval.
- 6.23 The Agency shall always provide MI Reports using the most recent MI Reporting Template.
- 6.24 CCS may provide the Agency with supplemental guidance for completing the MI Reporting Template. The Agency 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 CCS instructs.
- 6.26 CCS reserves the right to specify that all or any part of an MI Report be submitted by the Agency using an alternative means of communication to that specified in Clause

6.25, such as email. The Agency agrees to comply with any such instructions provided they do not materially increase the burden on the Agency.

### **MI Failures and MI Defaults**

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

### **Meetings**

- 6.30 The Agency 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 Agency 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 Agency's performance.

### **Admin Fees**

- 6.31 If, in any rolling 3 Month period, 2 or more MI Failures occur, the Agency acknowledges and agrees that CCS has the right to invoice the Agency Admin Fees. This right extends (subject to Clause 6.32) in respect of any MI Failures that arise in subsequent Months.
- 6.32 Once CCS has the right to charge Admin Fee(s) in respect of MI Failures as set out in Clause 6.31, if the Agency submits an MI Report for 2 consecutive Months and no MI Failure occurs, then the right to charge the Admin Fee(s) will lapse. However, if the conditions in Clause 6.31 are met in the future, CCS will again be able to exercise this right.
- 6.33 The Agency acknowledges and agrees that the Admin Fees are a fair reflection of the additional costs incurred by CCS as a result of the Agency failing to supply Management Information as required by this Framework Agreement.
- 6.34 CCS will notify the Agency if any Admin Fees arise in respect of MI Failures and is then entitled to invoice the Agency for such Admin Fees. These must be paid in accordance with Clauses 6.1 to 6.8 as a supplement to the Management Charge.
- 6.35 If an MI Default occurs, CCS shall (without prejudice to any other rights or remedies available to it) set a "Default Management Charge" calculated in accordance with

Clause 6.36 which the Agency shall pay, and/or CCS can decide to terminate this Framework Agreement.

- 6.36 The Default Management Charge will be the higher of:
- 6.36.1 the average Management Charge paid by the Agency in the six month period preceding the date on which the MI Default occurred or if the MI Default occurred within less than 6 Months from the commencement date of the first Call-Off Contract, in the whole period preceding the date on which the MI Default occurred; or
  - 6.36.2 £500.
- 6.37 If an MI Default occurs, CCS can invoice the Agency the Default Management Charge (less any Management Charge which the Agency has already paid to CCS for any Months in which the Default Management Charge is payable) in arrears for those Months in which an MI Failure occurred; and on an ongoing Monthly basis, until all and any MI Failures have been rectified to the reasonable satisfaction of CCS.
- 6.38 For the avoidance of doubt, the Parties agree that:
- 6.38.1 the Default Management Charge shall be payable as though it were the Management Charge due in accordance with the provisions of Clause 6.1 to 6.8, and
  - 6.38.2 any rights or remedies available to CCS under this Framework Agreement in respect of the payment of the Management Charge are also available to CCS in respect of the payment of the Default Management Charge.
- 6.39 If the Agency provides sufficient MI to rectify any MI Failures to the satisfaction of CCS and the MI demonstrates that the Agency has overpaid the Management Charges as a result of the application of the Default Management Charge then the Agency shall be entitled to a refund of the overpayment, net of any Admin Fees where applicable. If the MI demonstrates that the Agency has underpaid the Management Charges during the period when a Default Management Charge was applied, then CCS shall be entitled to immediate payment of a balancing sum as a debt together with interest.

## **7. RECORD KEEPING, CONFIDENTIALITY AND TRANSPARENCY**

### **Record keeping**

- 7.1 The Agency shall keep full and accurate records and accounts of the operation of this Framework Agreement for at least 7 Years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement or, if later, any Call-Off Contract. This includes records and accounts of all Services provided under it, all Call-Off Contracts entered into, any Services that have been sub-contracted out, and the amounts paid by each Client.
- 7.2 The Agency shall provide CCS with a completed Self-Audit Certificate, in the Form set out in Framework Schedule 6 (Annual Self-Audit Certificate), in respect of each Contract Year of this Framework Agreement. In completing the Self-Audit Certificate, the Agency shall confirm that it has reviewed a representative sample of Orders to provide assurance that:

- 7.2.1 all Orders are clearly identified in the Agency's order processing/ invoicing systems as Orders under the Framework
- 7.2.2 where required, Orders 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 Framework 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 Agency's management team or by the Agency's external auditor. The signatory must be professionally qualified in a relevant financial discipline.
- 7.4 At CCS' request, the Agency shall allow CCS, any relevant Client, 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 Agency'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 Framework Agreement)
  - 7.4.2 verify the costs of the Agency (including the costs of all sub-contractors and any third party suppliers)
  - 7.4.3 review any books of accounts kept by the Agency in connection with the provision of the Services
  - 7.4.4 verify the accuracy and completeness of the MI the Agency has provided
  - 7.4.5 verify the Open Book Data
  - 7.4.6 ensure that the Agency is complying with its obligations under this Framework Agreement and any Call-Off 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 Agency 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 Agency
  - 7.4.9 review the Agency'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' 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



- 7.14.13 receive from the Agency on request summaries of all central government public sector expenditure placed with the Agency including through routes outside of the Framework. This is to verify that the Agency'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 Agency shall provide such records and accounts (together with copies of the Agency's published accounts) on request during the Term and for a period of seven Years after expiry of the Term or any Call-Off 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 Agency
- 7.6.2 delay the provision of Services under any Call-Off Contract.
- insofar as the Agency 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 Agency 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 Agency and to equipment used in the provision of the Services (and/or Ordered Services as appropriate), and
- 7.7.3 reasonable access to the Agency Staff.
- 7.8 If an Audit reveals that the Agency has underpaid an amount equal to or greater than 1% of the Management Charge due in respect of any Monthly reporting and accounting period relating to this Framework Agreement and any Call-Off Contracts, the Agency shall reimburse CCS its reasonable costs incurred in relation to the Audit.
- 7.9 If an Audit reveals:
- 7.9.1 that the Agency has underpaid an amount equal to or greater than 5% of the Management Charge due in respect of any Monthly reporting and accounting period relating to this Framework Agreement and any Call-Off Contracts, or
- 7.9.2 a material Default, or
- 7.9.3 a Persistent Failure
- CCS may terminate this Framework Agreement. The Agency 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.

### **Client satisfaction monitoring**

- 7.11 CCS may from time to time undertake (or procure the undertaking of) a "Client Satisfaction Survey", to assess the level of satisfaction among some or all Clients 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 Agency compliance with this Framework Agreement and any Call-Off Contracts, and
  - 7.11.4 any other assessment CCS deems appropriate for monitoring Client satisfaction.
- 7.12 CCS and the Clients are entitled, but not obliged, to use the results of any Client Satisfaction Survey to make decisions in relation to this Framework Agreement and any Call-Off 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 Framework Agreement or without obtaining Approval
  - 7.13.4 not using or exploiting it in any way except for the purposes anticipated under this Framework Agreement.
- 7.14 The Agency agrees to enter into any non-disclosure agreement required by a Client as part of a Further Competition Procedure where the terms of such non-disclosure agreement are reasonable.
- 7.15 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”.
- 7.16 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.
- 7.17 A Recipient is entitled to disclose Confidential Information if:
- 7.17.1 it is required to do so by Law, (though Clauses 7.37 to 7.43 (Freedom of Information) applies to disclosures required under the FOIA or the EIRs
  - 7.17.2 the need for such disclosure arises out of or in connection with:
    - a) any legal challenge or potential legal challenge against CCS regarding this Framework Agreement
    - b) the examination and certification of CCS’s accounts (provided that the disclosure is made on a confidential basis) or for any examination under section 6(1) of the National Audit Act 1983, or
    - c) the conduct of a Central Government Body review in respect of this Framework Agreement;

- 7.17.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010. Such disclosure can only be made to the Serious Fraud Office.
- 7.18 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.
- 7.19 Subject to Clauses 7.17 and 7.18, the Agency may disclose CCS Confidential Information, on a confidential basis, to:
- 7.19.1 Agency Staff who are directly involved in the provision of the Services and need to know the Confidential Information to enable the performance of the Agency's obligations under this Framework Agreement, and
- 7.19.2 its professional advisers for the purposes of obtaining advice in relation to this Framework Agreement.
- 7.20 Where the Agency 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 Framework Agreement.
- 7.21 CCS may disclose Agency Confidential Information:
- 7.21.1 to any Central Government Body or other Client, on the basis that the information may only be further disclosed to Central Government Bodies or other Clients
- 7.21.2 to Parliament, including any Parliamentary committees, or if required by any British Parliamentary reporting requirement
- 7.21.3 if it deems disclosure necessary or appropriate in the course of carrying out its public functions
- 7.21.4 on a confidential basis to a professional adviser, consultant, agency or other person engaged by a Central Government Body or Client, for any purpose relating to or connected with this Framework Agreement
- 7.21.5 on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement, or
- 7.21.6 to a proposed transferee, assignee or novatee of, or successor in title to CCS.
- 7.22 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.
- 7.23 The Confidential Information that CCS may disclose under Clause 7.21 includes information relating to Call-Off Contracts, including service levels, pricing information (which includes information on prices tendered in a Further Competition Procedure, even where such a Further Competition Procedure does not result in the award of a Call-Off Contract). The terms of any Call-Off Contract under this Framework Agreement may be shared with any Central Government Body or Other Client.

- 7.24 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 Framework 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.
- 7.25 If the Agency does not comply with these rules on Confidentiality, CCS can terminate this Framework Agreement.

### **Transparency**

- 7.26 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 Framework Agreement and any Transparency Reports under it is not Confidential Information and shall be made available in accordance with the procurement policy note [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/458554/Procurement\\_Policy\\_Note\\_13\\_15.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf) and the Transparency Principles referred to therein. 13/15
- 7.27 CCS will determine whether any of the content of this Framework Agreement is exempt from disclosure in accordance with the provisions of the FOIA. CCS may consult with the Agency to inform its decision regarding any redactions but will have the final decision in its absolute discretion.
- 7.28 The Agency hereby gives its consent for CCS to publish this Framework 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 Framework Agreement.
- 7.29 The Agency acknowledges and agrees that publication of this Framework Agreement will include the publication of the name and contact details of the Agency Representative (including its successors). Such details will not be redacted.
- 7.30 By signing this Framework Agreement, the Agency confirms that it has obtained the Agency Representative's consent and shall, prior to the appointment of any successor Agency Representative obtain the successor's consent, permitting the publication of their name and contact details under this Clause 7.30 or otherwise, the Agency shall take all necessary steps to ensure that publication will not cause CCS, a Client or the Agency to breach the Data Protection Act 1998.
- 7.31 The Agency shall cooperate with CCS to enable publication of this Framework Agreement.

### **Official Secrets Act**

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

### **Data Protection Act (DPA)**

- 7.33 Under this Framework Agreement, for Data Protection purposes, the Parties agree that CCS is the Data Controller and the Agency is the Data Processor in relation to CCS

Personal Data. Both Parties will observe all the relevant obligations under the DPA which arise in connection with this Framework Agreement.

7.34 The Agency shall:

7.34.1 Process the Personal Data only in accordance with instructions from CCS to perform its obligations under this Framework Agreement;

7.34.2 ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;

7.34.3 not disclose or transfer the Personal Data to any third party or Agency Staff unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of CCS (save where such disclosure or transfer is specifically authorised under this Framework Agreement);

7.34.4 take reasonable steps to ensure the reliability and integrity of any Agency Staff who have access to the Personal Data and ensure that the Agency Staff:

- a) are aware of and comply with the Agency's duties under this Clause 7.34 and Clause 7.13 to 7.25 (Confidentiality);
- b) 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 Framework Agreement; and
- c) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);

7.34.5 notify CCS within five (5) Working Days if it receives:

- a) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request), a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to CCS's obligations under the DPA;
- b) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
- c) 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;

7.34.6 provide CCS with full cooperation and assistance (within the timescales reasonably required by CCS) in relation to any complaint, communication or request made (as referred to at Clause 7.34.5, including by promptly providing:

- a) CCS with full details and copies of the complaint, communication or request;
- b) where applicable, such assistance as is reasonably requested by CCS to enable CCS to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and

- c) on request by CCS, with any Personal Data it holds in relation to a Data Subject; and

7.34.7 if requested by CCS, provide a written description of the measures that the Agency has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 7.34 and provide to CCS copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals

- 7.35 The Agency shall use its reasonable endeavours to assist CCS to comply with any obligations under the DPA and shall not perform its obligations under this Framework Agreement in such a way as to cause CCS to breach any of CCS' obligations under the DPA to the extent the Agency is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 7.36 The provisions of Clauses 7.33 to 7.35 apply indefinitely after the termination or expiry of this Framework Agreement.
- 7.37 The Agency shall not allow any CCS Personal Data or to be processed, stored, accessed or otherwise transferred outside the European Economic Area without Approval or the prior written consent of CCS or the relevant Client.
- 7.38 If CCS or the relevant Client consents to such Processing, storing, accessing or transfer outside the European Economic Area, the Agency shall comply with:
  - 7.38.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in
  - 7.38.2 schedule 1 of the DPA CCS Personal Data, and
  - 7.38.3 any reasonable instructions given by CCS or the relevant Client.

#### **Freedom of Information Act (FOIA)**

- 7.39 The Agency acknowledges that CCS is subject to the requirements of the FOIA and the Environmental Information Regulations, and will assist and co-operate with CCS to enable CCS to comply with its Information disclosure obligations.
- 7.40 The Agency 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 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 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 Environmental Information Regulations.
- 7.41 CCS will be responsible for determining in its absolute discretion and notwithstanding any other provision in this Framework 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 Environmental Information Regulations.

- 7.42 The Agency shall not respond directly to a Request for Information without prior Approval.
- 7.43 The Agency acknowledges that CCS may, acting in accordance with the Ministry of Justice Codes, be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Agency or the Services without consulting the Agency. However, CCS will take reasonable steps to give the Agency advance notice, or failing that, to draw the disclosure to the Agency's attention after any such disclosure.
- 7.44 The Agency shall ensure that all Information is retained for disclosure in accordance with Clauses 7.1 to 7.10 (Records and Audit Access) and will permit CCS to inspect such records as requested.
- 7.45 The Agency acknowledges that the Commercially Sensitive Information listed in Framework Schedule 6 (Commercially Sensitive Information) is of an indicative nature only and that CCS may be obliged to disclose it in accordance with Clause 7.41.

#### **Cyber essentials scheme condition**

- 7.46 Prior to the execution of the first Call-Off Contract the Agency shall provide CCS with a valid [Cyber Essentials Scheme Basic Certificate] [Cyber Essentials Scheme Plus Certificate] [Cyber Essential Scheme certificate equivalent], as a condition for the award of this Framework Agreement.
- 7.47 Where the Agency continues to Process Cyber Essentials Scheme Data during the Term or the contract period of any Call-Off Contract the Agency shall deliver to CCS evidence of renewal of a valid [Cyber Essentials Scheme Basic Certificate] [Cyber Essentials Scheme Plus Certificate] [Cyber Essential Scheme certificate equivalent] on each anniversary of the first applicable certificate obtained by the Agency under Clause 7.46.
- 7.48 In the event that the Agency fails to comply with Clauses 7.46 or 7.47, CCS reserves the right to terminate this Framework Agreement for material Default.

### **8. GENERAL GOVERNANCE**

#### **Publicity and marketing by CCS**

- 8.1 CCS is entitled to publicise this Framework Agreement in accordance with any legal obligation upon it. This includes any examination of this Framework 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 Framework Agreement to Clients. To support this, CCS may require the Agency to provide information. It will provide a template for the Agency to complete, together with instructions for completion.
- 8.3 If the Agency does not complete the template according to these instructions, CCS may exclude the Agency from its marketing materials.

## **Publicity and marketing by agencies**

- 8.4 If the Agency wishes to publicise its participation in this Framework Agreement, it must obtain Approval from CCS. In particular, the Agency shall obtain Approval before:
- 8.4.1 making any press announcements regarding the Framework Agreement
  - 8.4.2 publicising its participation in the Framework Agreement via social media
  - 8.4.3 entering any competition or award scheme where a reference to a campaign or other piece of work completed under this Framework Agreement may form part of the Agency's submission
  - 8.4.4 mentioning CCS or using the CCS brand in any promotion or marketing or announcement of Orders
- 8.5 Any marketing materials produced by the Agency in relation to this Framework Agreement must comply in all respects with the Branding Guidance.
- 8.6 CCS will not unreasonably withhold or delay its Approval.
- 8.7 The Agency 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 Agency 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 Agency'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 Framework Agreement are or are likely to exceed £5 million during the Term.
- 8.10 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Agency shall:
- 8.10.1 notify CCS in writing within 5 Working Days of its occurrence, and
  - 8.10.2 promptly provide to CCS details of how the Agency is addressing this, along with any mitigating factors the Agency considers relevant and any other information in relation to the Occasion of Tax Non-Compliance that CCS reasonably requires
- 8.11 If the Agency fails to comply with Clause 8.10, CSS may terminate this Framework Agreement for material Default.

## **Value for money**

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

## **Continuous improvement**

- 8.13 The Agency 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. FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION**

### **Termination**

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

### **Termination for material Default**

9.2 CCS may terminate this Framework Agreement for material Default at any time if:

9.2.1 A Client terminates a Call Off Agreement for the Agency's breach of that Call Off Agreement

9.2.2 the Agency is in breach of Clause 5.7 to 5.11 (Prevention of Fraud and Bribery)

9.2.3 the Agency is in breach of Clause 5.13 or 5.14 (Conflicts of Interest)

9.2.4 an Audit reveals that the Agency has underpaid Management Charges by an amount equal to or greater than 5% of the amount due in accordance with Clause 7.9 (Records and Audit Access)

9.2.5 the Agency fails to comply with Clauses 7.13 to 7.25 (Confidentiality) and/or a Client terminates a Call-Off Contract for a breach by the Agency of its confidentiality obligations under that Call-Off Contract

9.2.6 the Agency breaches Clause 7.32 (Official Secrets Acts)

9.2.7 the Agency is in breach of Clauses 7.46 to 7.48 (Cyber Essentials Scheme Condition)

9.2.8 where the Parties fail to agree a variation in accordance with Clause 11.2 (Variations to the Framework)

9.2.9 where the Agency fails to comply with all applicable Law in connection with the performance of this Framework Agreement

9.2.10 an MI Default occurs

9.2.11 a Persistent Failure occurs

9.2.12 the Agency commits a material Default of any of the following Clauses:

a) Subject to the bullet point below that deals with Occasions of Tax Non-Compliance, Clause 5.1 (Warranties, Representations and Undertakings)

b) Clause 5.16 and 5.17 (Framework Agreement Performance)

c) Clause 6.1 to 6.9 (Management Charge)

d) Clause 6.10 to 6.16 (Provision of Management Information)

- e) Clause 7.1 to 7.10 (Record Keeping)
- f) Clause 7.33 to 7.38 (Data Protection Act)
- g) Clause 7.39 to 7.45 (Freedom of Information)
- h) Clause 8.9 to 8.11 (Promoting Tax Compliance)

9.2.13 the representation and warranty given by the Agency in relation to Occasions of Tax Non-Compliance in Clause 5.1.8 is materially untrue or misleading, and the Agency fails to provide details of proposed mitigating factors which are acceptable to CCS

9.2.14 the Agency commits any material Default which is not, in the reasonable opinion of CCS, capable of remedy, and/or

9.2.15 the Agency commits a Default, including a material Default, which in the opinion of CCS is capable of remedy, but the Agency has not remedied such Default to the satisfaction of CCS within 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 Agency.

9.3 To terminate the Framework Agreement, CCS must issue a Termination Notice to the Agency.

#### **Termination in Relation to Guarantee**

9.4 If CCS has required the Agency to provide a Framework Guarantee under Section 13. (Guarantee), CCS may terminate the Framework Agreement if:

9.4.1 the Framework Guarantor withdraws the Framework Guarantee

9.4.2 the Framework Guarantor is in breach of, or is likely to breach the Framework Guarantee

9.4.3 the Framework Guarantor experiences an Insolvency Event

9.4.4 the Framework Guarantee becomes invalid or unenforceable for any reason whatsoever, or

9.4.5 the Agency fails to provide the required Guarantee documentation by the date CCS specified.

9.5 Termination can be avoided if the Framework Guarantee is replaced by an alternative guarantee agreement acceptable to CCS.

9.6 If a Client has required the Agency to provide a Call-Off Guarantee under Section 13 (Guarantee), the Client may terminate this Framework Agreement by issuing a Termination Notice to the Agency if:

9.6.1 the Call-Off Guarantor withdraws the Call-Off Guarantee;

9.6.2 the Call-Off Guarantor is in breach of, or is likely to breach the Call-Off Guarantee

9.6.3 the Call-Off Guarantor experiences an Insolvency Event

9.6.4 the Call-Off Guarantee becomes invalid or unenforceable for any reason whatsoever

9.6.5 the Agency fails to provide the required Guarantee documentation by the date specified by the Client.

9.7 Termination can be avoided if the Call-Off Guarantee is replaced by an alternative guarantee agreement acceptable to the Client.

#### **Termination for Financial Standing**

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

#### **Termination on Insolvency**

9.9 CCS may terminate this Framework Agreement with immediate effect if an Insolvency Event affecting the Agency occurs.

#### **Termination on Change of Control**

9.10 CCS may terminate this Framework Agreement with immediate effect within 6 Months of it becoming aware that a Change of Control has occurred if it believes that such change is likely to have an adverse effect on the Agency's ability to supply the Services.

9.11 CCS may not terminate this Framework 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**

9.12 CCS may terminate this Framework Agreement on any grounds by giving at least 3 Months' written notice to the Agency of termination with effect from a date specified in such notice.

#### **Termination for breach of Regulations**

9.13 CCS may terminate this Framework 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**

9.14 Either Party may, by written notice to the other, terminate this Framework Agreement if a Force Majeure Event endures for a continuous period of more than 90 Working Days.

#### **Partial Termination**

9.15 Wherever CCS is entitled to terminate this Framework Agreement for any of the reasons listed in 9.2 to 9.14 (inclusive), it may alternatively terminate the Framework Agreement in part only. This is only possible if the parts of this Framework Agreement

not terminated can operate effectively without the terminated parts to deliver the intended purpose of this Framework Agreement.

### **Suspension of Agency's appointment**

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

### **Consequences of termination and expiry**

- 9.20 Even if the Agency has received a notice to terminate this Framework Agreement, the Agency shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of this Framework Agreement or such other date as required.
- 9.21 In particular, termination or expiry of this Framework Agreement will not result in automatic termination of any Call-Off Contracts. The Agency shall also continue to pay any Management Charges due to CCS in relation to such Call-Off Contracts, even if the Framework Agreement has been terminated.
- 9.22 If CCS terminates the Framework Agreement for material Default and then makes other arrangements for the provision of the Services, CCS is entitled to recover from the Agency the reasonable additional costs incurred in procuring, implementing and operating any alternative Services. CCS will make no further payments to the Agency until CCS has established and recovered the final cost of making those other arrangements
- 9.23 Within 10 Working Days of the date of termination or expiry of this Framework Agreement, the Agency shall return to CCS any CCS Confidential Information in the Agency's possession or control.
- 9.24 CCS is entitled to require access to data or information arising from the provision of the Services by the Agency until the latest of 12 Months following termination or expiry of this Framework Agreement, or 3 Months following the date on which the Agency ceases to provide Services under any Call-Off Contract.
- 9.25 Termination or expiry of this Framework Agreement does not affect any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.

### **Severability**

- 9.26 If any part of the Framework Agreement becomes invalid, illegal or unenforceable, it will be severed from the Framework Agreement and the remaining parts of the Framework Agreement or any Call-Off Contract will be unaffected.

- 9.27 If any fundamental part of this Framework Agreement becomes invalid, CCS and the Agency may agree to remedy the invalidity. If the Parties are not able to do so within 20 working days of becoming aware of the invalidity, the Framework Agreement will be automatically terminated and each Party will be responsible for their own costs arising from the termination of the Framework Agreement.

#### **What happens after termination?**

- 9.28 The following Clauses and Framework Schedules, and all obligations placed on the Agency through them, remain in force after termination or expiry of this Framework Agreement:
- 9.28.1 Section 2 (Services Offered)
  - 9.28.2 Section 3 (How Services will be bought)
  - 9.28.3 Clauses 4.2 to 4.5 (Scope of Framework Agreement)
  - 9.28.4 Clauses 5.1 (Warranties, Representations and Undertakings) and 5.7 to 5.12 (Prevention of Bribery and Corruption)
  - 9.28.5 Clauses 6.10 to 6.16 (Provision of Management Information) and 6.1 to 6.8 (Management Charge)
  - 9.28.6 Clauses 7.1 to 7.10 (Record Keeping), 7.13 to 7.25 (Confidentiality), 7.26 to 7.31 (Transparency), 7.32 (Official Secrets Acts), 7.33 to 7.38 (Data Protection Act) and 7.39 to 7.45 (Freedom of Information).
  - 9.28.7 Clauses 8.12 (Value for Money)
  - 9.28.8 Clause 9.28 (What happens after termination)
  - 9.28.9 Clauses 10.1 to 10.7 (Liability) and 10.9 to 10.16 (Insurance)
  - 9.28.10 Section 14 (Rights of Third Parties)
  - 9.28.11 Clauses 15.1 to 15.2 (Waiver and Cumulative Remedies) and 15.7 (Law and Jurisdiction) and;
  - 9.28.12 Schedules 3 (Charging Structure), 6 (Self Audit Certificate), 7 (Commercially Sensitive Information), 8 (Framework 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 Framework 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 Charge payable by the Agency in the previous Contract Year
- 10.2.3 If a Default or CCS Cause occurs after the end of the Term, in each twelve 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 Charge payable by the Agency under this Framework Agreement in the last Contract Year that commenced during the Term.
- 10.3 There are no limits to the Agency's liability in relation to the obligation to pay any Management Charges 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 Agency 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 Charge or Default Management Charge which are 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 Agency of any Laws.
- 10.6 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising under this Framework Agreement.
- 10.7 For the avoidance of doubt, the Parties acknowledge and agree that Clause 10.1 to 10.5 shall not limit the Agency's liability to a Client under any Call-Off Contract and the

Agency's liability under a Call-Off Contract shall be as provided for in that Call-Off Contract only.

## **Insurance**

- 10.8 The Agency shall hold and maintain the following insurances in relation to the performance of its obligations under this Framework Agreement and any Call-Off Agreement:
- 10.8.1 public liability insurance to cover all risks in the performance of this Framework Agreement and any Call-Off Contract, with a minimum limit of £2 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 Framework Agreement and any Call-Off Contract with a minimum limit of indemnity of £1 million for each individual claim.
- 10.9 Clients are entitled to require the Agency to put in place a higher limit of indemnity and/or such other insurances as are relevant to their requirements under a Call-Off Contract. Such additional insurance requirements must be specified included in the relevant Brief.
- 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 Agency in respect of risks insured in the international insurance market.
- 10.11 The Agency 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 Agency of any liabilities arising under this Framework Agreement or any Call-Off Contract.
- 10.13 The Agency 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 Agency fails to maintain the insurances required by this Framework 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 Agency.
- 10.15 The Agency shall maintain the insurances referred to in Clause 10.8 in full effect from the Appointment Date until 6 Years after the expiration or earlier termination of this Framework Agreement (or such longer term as CCS requires). The Agency 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 Agency, its staff, or any other failure in the Agency'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 60 Working Days, the Party not affected by the Force Majeure Event can suspend or terminate this Framework Agreement. They must do so in writing, and state the date from which the suspension or termination will come into effect.

## **11. VARIATIONS TO THIS FRAMEWORK AGREEMENT**

- 11.1 Subject to Clause 11.3 and Framework Schedule 3 (Charging Structure), this Framework Agreement can only be varied if:
- 11.1.1 CCS notifies the Agency in writing that it wishes to vary the terms of this Framework Agreement and provides the Agency with full written details of any such proposed change by completing, signing and sending the Variation Form as set out in Framework Schedule 11 (Variation Form), and
  - 11.1.2 the completed Variation Form is signed by the CCS Representative and the Agency Representative.
- 11.2 If no variation agreement is reached within 30 Working Days of CCS notifying the Agency that it wishes to vary the terms, CCS may give written notice to the Agency that either:
- 11.2.1 the Parties will continue to perform their obligations under this Framework Agreement without the variation, or
  - 11.2.2 the Framework Agreement will be terminated with immediate effect.

### **Legislative Change**

- 11.3 The Agency shall neither be relieved of its obligations under this Framework Agreement nor entitled to increase the Framework 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 Agency shall notify CCS of the likely effects of that change, including whether any change is required to the Services (or Ordered Services, as appropriate), the Framework Prices or this Framework 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 Agency can mitigate the effect of the Specific Change of Law, and the Agency shall:
- 11.5.1 provide evidence that the Agency 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 Agency 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 Framework Prices, or relief from the Agency'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 Agency's Representative. The variation agreement will only apply to Call-Off Contracts signed after the date of the increase.

## **12. TRANSFER AND SUB-CONTRACTING**

### **Transfer**

- 12.1 This Framework Agreement is between CCS and the Agency only. The Agency is not allowed to assign, novate or otherwise dispose of any rights and obligations under this Framework 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 Framework Agreement to any other Client or
- 12.2.2 novate this Framework 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 Agency's obligations under this Framework Agreement.
- 12.3 The Agency 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 Agency is entitled to sub-contract its obligations to supply the Services. The Agency shall ensure that terms are included in any Sub-Contract which require the Agency to pay any undisputed sum due to the relevant Sub-Contractors within 30 calendar days of receiving the Sub-Contractor's invoice.
- 12.5 The Agency shall put in place and maintain throughout the Term robust systems and procedures for the management of Sub-Contractors utilised by the Agency in relation to the Framework 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 Framework Agreement and any Call-Off Contract. The Agency's management systems must include effective monitoring of service delivery and price management.
- 12.6 The Agency 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 Agency remains responsible for the provision of the Ordered Services at all times. The Agency 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 Agency under this Framework Agreement applies equally to its Sub-Contractors.
- 12.8 CCS may require the Agency 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 Agency to terminate a Sub-Contract under Clause 12.8, the Agency remains responsible for maintaining the provision of the Services.

### 13. GUARANTEES

- 13.1 [Where CCS has notified the Agency that [the award of this Framework Agreement is conditional upon receipt of] [prior to the execution of the first Call-Off Contract the Agency shall provide] a valid Framework Guarantee, then the Agency shall provide CCS with:
- 13.1.1 an executed Framework Guarantee from a Framework Guarantor and
  - 13.1.2 a certified copy extract of the board minutes and/or resolution of the Framework Guarantor approving the execution of the Framework Guarantee].
- 13.2 This Guarantee must be provided before [the Framework Agreement] [any Call-Off Contract] can be formally awarded].
- 13.3 [Where a Client has notified the Agency that it will only award a Call-Off Contract if it receives a valid Call-Off Guarantee, then before the Call-Off Contract can be awarded, the Agency shall provide the Client with:

- 13.3.1 an executed Call-Off Guarantee from a Call-Off Guarantor; and
- 13.3.2 a certified copy extract of the board minutes and/or resolution of the Call-Off Guarantor approving the execution of the Call-Off Guarantee].

#### **14. RIGHTS OF THIRD PARTIES**

- 14.1 The provisions of Section 3 (How Services will be bought (Call-Off Process)), Clause 5.1 (Warranties and Representations), Clause 7.11 to 7.12 (Client Satisfaction Monitoring), Clause 7.13 to 7.25 (Confidentiality), Clause 9.28 (What happens after Termination), Clause 10.8 to 10.15 (Insurance) and Clause 9.26 to 9.27 (Severability) 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 Framework Agreement (a “Third Party”) has no right to enforce any term of this Framework 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 Client 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 Client, and
  - 14.3.2 any other term of this Framework Agreement which is for the benefit of the Client.
- 14.4 CCS may act as agent and trustee for each Client and:
  - 14.4.1 enforce on behalf of that Client 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 Client 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 Framework Agreement or any one or more Clauses of it.

#### **15. OTHER PROVISIONS**

##### **Waiver and cumulative remedies**

- 15.1 The rights and remedies under this Framework 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 Framework 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 Framework Agreement are cumulative and, unless otherwise provided in this Framework Agreement, are not exclusive of any right

or remedies provided at Law or in equity or otherwise under this Framework Agreement.

### **Relationship to the parties**

15.3 Nothing in this Framework 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 Framework Agreement.

### **Entire agreement**

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

### **Framework agreement management**

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

### **Law and jurisdiction**

15.7 This Framework Agreement, any Call-Off 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 Framework Agreement in person, by post or by email. The table below sets out deemed time of delivery and proof of service for each.

<b>Notice delivered</b>	<b>Deemed time of delivery</b>	<b>Proof of service</b>
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	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]

Agency  
Address: [xxx]  
For the attention of: [xxxx]  
Tel: [xxxx]  
Fax: [xxxx]  
Email: [xxxx]

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 Framework Agreement or any Call-Off Contract, neither CCS, a Client nor the Agency 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 Agency shall ensure and procure that the availability, provision and use of the Services and the performance of the Agency's obligations under this Agreement shall not infringe any IPR or any third party.

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

- 16.5 The Agency 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 Framework Agreement, the Agency 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 Client which it cannot resolve within 5 Working Days, it must notify the other Party. If the Agency has received the complaint, it must provide in the notice full details of the Agency's plans to resolve the Complaint.
- 17.2 The Agency shall work to resolve the Complaint within 10 Working Days.
- 17.3 At the request of CCS or the Client, the Agency shall, within 2 working days, provide CCS or the Client 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 Framework Agreement, they must try to settle it within 20 Working Days of either Party notifying the other of the dispute. This should include escalating the dispute to the CCS Representative and the Agency 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 Framework Agreement will not be suspended, cease or be delayed during a dispute.
- 17.7 If the dispute cannot be resolved by the Parties within 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 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 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 Framework Agreement without the prior written consent of both Parties.
- 17.12 If the Parties fail to reach a resolution within 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 Framework Agreement (although if there is any conflict between those rules and this Framework Agreement, this Framework 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 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.

## FRAMEWORK SCHEDULE 1: DEFINITIONS AND INTERPRETATION

### 1. DEFINED TERMS

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

<b>Account Management</b>	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 Agency personnel and Client personnel, management of the budget, deliverables under a Call-Off Contract, subcontractors and other Client suppliers.
<b>Admin Fees</b>	The costs incurred by CCS in dealing with MI Failures calculated in accordance with the tariff of administration charges published by CCS under the sub-heading "Submitting monthly management information" at the following link: <a href="https://www.gov.uk/guidance/current-crown-commercial-service-suppliers-what-you-need-to-know">https://www.gov.uk/guidance/current-crown-commercial-service-suppliers-what-you-need-to-know</a> .
<b>Agency Action Plan</b>	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 Agency performance.
<b>Agency Confidential Information</b>	Any information that the Agency gives to CCS or to Clients that is designated as being confidential, or which ought reasonably be considered to be confidential (whether or not it is marked "confidential"). This may include information, however it is conveyed, that relates to the Agency's business, affairs, developments, trade secrets, Know-How, personnel and suppliers including all IPRs.
<b>Agency Representative</b>	The representative appointed by the Agency in relation to this Framework Agreement.
<b>Agency Staff</b>	All persons employed by the Agency, together with the Agency'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 Agency's obligations under this Framework Agreement or any Call-Off Contract.



<b>Appointment Date</b>	The date set out in Section 1
<b>Approval</b>	The prior written consent of CCS.
<b>Audit</b>	An audit carried out under Clause 7.1 to 7.10 (Record Keeping, Confidentiality and Transparency).
<b>Audit Report</b>	A report summarising the testing completed and the actions arising following an Audit.
<b>Board Account Director</b>	A director who sits on the Agency's Board of Directors who will take responsibility for managing the relationship between the Agency, Clients and CCS.
<b>Branding Guidance</b>	The agency marketing toolkit which includes logos and guidance provided by CCS to the Agency.
<b>Brief</b>	The document issued by a Client as part of the Call-Off Process containing the information set out in Clause 3.10.1 of Section 3 (How Services will be bought (Call-Off Process)).
<b>Call-Off Contract</b>	The legally binding agreement (entered into following the provisions of this Framework Agreement) for the provision of Services made between a Client and the Agency which includes the Letter of Appointment, terms and conditions substantially in the form of the Call-Off Terms, any Statements of Work and any other documents expressly incorporated into that document in accordance with its terms.
<b>Call-Off Guarantee</b>	A deed of guarantee in favour of a Client in the form set out in Framework Schedule 9 (Guarantee).
<b>Call-Off Guarantor</b>	The person who provides the Client with the Call-Off Guarantee.
<b>Call-Off Process</b>	The Process for awarding a Call-Off Contract set out in Section 3 (How Services will be bought (Call-Off Process)).
<b>Call-Off Terms</b>	The terms and conditions in Part 2 of Framework Schedule 4 (Letter of Appointment and Call-Off Terms).

<b>CCS Cause</b>	Any breach of the Framework Agreement by CCS, for which CCS is liable to the Agency. This includes, but is not limited to breach of a fundamental term, omission, misrepresentation, negligence or negligent statement in relation to this Framework Agreement.
<b>CCS Confidential Information</b>	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 Clients that is designated as being confidential, or which ought reasonably be considered to be confidential (whether or not it is marked "confidential").
<b>CCS Personal Data</b>	Any personal data supplied by CCS to the Agency in connection with this Framework Agreement. "Personal data" has the same meaning as set out in the Data Protection Act 1998.
<b>CCS Representative</b>	The representative appointed by CCS in relation to this Framework Agreement.
<b>Central Government Body</b>	A body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: Government Department; Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); Non-Ministerial Department; or Executive Agency.
<b>Change in Law</b>	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 Call-Off Terms.
<b>Change of Control</b>	A change in the ownership or control of an Agency, as defined in section 450 of the Corporation Tax Act 2010.
<b>Charges</b>	The charges payable to the Agency by the Buyer under any Call-Off Contract in consideration of the full and proper performance by the Agency of the Agency's obligations under the Call-Off Contract calculated in a manner that is consistent with the Charging Structure as set out in Framework Schedule 3 (Charging Structure).

<b>Charging Structure</b>	The way Charges are to be calculated for each Call-Off Contract. The structure is set out in Framework Schedule 3 (Charging Structure).
<b>Client</b>	The bodies listed in the OJEU Notice who can make an Order and enter into a Call-Off Contract under this Framework Agreement.
<b>Commercially Sensitive Information</b>	Information listed in Framework Schedule 7 which: <ul style="list-style-type: none"> <li>a) relates to the Agency, its IPR or its business or information which the Agency has indicated to CCS that, if disclosed by CCS, would cause the Agency significant commercial disadvantage or material financial loss; and/or</li> <li>b) that constitutes a trade secret.</li> </ul>
<b>Comparable Supply</b>	The supply of services to another customer of the Agency that are the same or similar to the Services.
<b>Complaint</b>	A formal written complaint raised by a Client in relation to the performance of this Framework Agreement or any Call-Off Contract. Complaints must be raised in accordance with Clauses 17.1 to 17.3 (Complaints Handling and Resolution).
<b>Confidential Information</b>	The CCS Confidential Information, any Client's confidential information and/or the Agency Confidential Information.
<b>Contract Year</b>	A consecutive 12- month period during the Term commencing on the Appointment Date or each anniversary thereof.
<b>Control</b>	As defined in sections 1124 and 450 of the Corporation Tax Act 2010.
<b>Crown</b>	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 agencies from time to time carrying out functions on its behalf.
<b>Cyber Essentials Scheme</b>	The Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats. Details of the Cyber Essentials Scheme can be found here:

	<a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a> .
<b>Cyber Essentials Scheme Basic Certificate</b>	The certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance.
<b>Cyber Essentials Scheme Data</b>	Sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme.
<b>Cyber Essentials Scheme Plus Certificate</b>	The certification awarded on the basis of external testing by an independent certification body of the Agency's cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance.
<b>Data Controller</b>	Has the same meaning as set out in the Data Protection Act 1998.
<b>Data Processor</b>	Has the same meaning as set out in the Data Protection Act 1998.
<b>Data Protection Legislation or DPA</b>	The Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including any related guidance and codes of practice issued by the Information Commissioner or relevant Government departments.
<b>Data Subject</b>	Has the same meaning as set out in the Data Protection Act 1998.
<b>Data Subject Access Request</b>	A request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data
<b>Default</b>	Any breach of the Framework Agreement by the Agency, for which the Agency 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 Framework Agreement or the subject matter of this Framework Agreement.
<b>DOTAS</b>	The Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under 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.
<b>Environmental Information Regulations</b>	The Environmental Information Regulations 2004 together with any related guidance and/or codes of practice issued by the Information Commissioner or relevant Government department.
<b>FOIA</b>	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.
<b>Force Majeure Event</b>	Defined in Clause 10.16.
<b>Framework Agencies</b>	The agencies (including the Agency) appointed by CCS to supply the Services on the same or similar terms to this Framework Agreement.
<b>Framework Agreement</b>	This agreement, including the Clauses, Framework Schedules and any annexes to them.
<b>Framework Guarantee</b>	A deed of guarantee in favour of CCS in the form set out in Framework Schedule 9 (Guarantee).
<b>Framework Guarantor</b>	The person, acceptable to CCS, who provides a Framework Guarantee.
<b>Framework Price(s)</b>	The price(s) applicable to the provision of the Services set out in Framework Schedule 3 (Charging Structure).
<b>Fraud</b>	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 Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown.
<b>Further Competition Award Criteria</b>	The award criteria set out in Clause 3.10.11 of Section 3. How Services will be bought (Call-Off Process).
<b>Further Competition Procedure</b>	The process for a Client issuing a Brief and a Framework Agency submitting a Proposal set out in Clause 3.10 of Section 3. How Services will be bought (Call-Off Process).
<b>General Anti-Abuse Rule</b>	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.
<b>General Change in Law</b>	A Change in Law of a general nature. This includes changes to taxation or duties of any sort affecting the Agency or which affect or relate to a Comparable Supply.

<b>Good Industry Practice</b>	Standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector.
<b>Grave Misconduct</b>	An act of grave professional misconduct within Regulation 57(8)(c) of the Public Contracts Regulations 2015. This could mean: <ul style="list-style-type: none"> <li>a) poor performance or serious or persistent breaches which have led to the early termination of a contract between the Crown or any Client and the Agency, or</li> <li>b) poor performance or a serious breach or breaches which are the subject of proceedings concerning a contract between the Crown or any Client and the Agency, or</li> <li>c) serious financial irregularities on the part of the Agency (within any legal jurisdiction), or</li> <li>d) misconduct which would be regarded as serious by any Regulatory Body.</li> </ul>
<b>Improvement Notice</b>	A notice issued by CCS to the Agency detailing how the Agency shall improve the provision of the Services.
<b>Improvement Plan</b>	A plan required by CCS from the Agency which shall detail how the Agency will improve the provision of the Services.
<b>Information</b>	Where used with a capital I, it has the meaning given under section 84 of the Freedom of Information Act 2000.
<b>Insolvency Event</b>	Means, in respect of the Agency <b>[or Framework Guarantor (as applicable)]</b> : <ul style="list-style-type: none"> <li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986; or</li> <li>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</li> <li>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</li> <li>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> </ul>

	<ul style="list-style-type: none"> <li>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</li> <li>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>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</li> <li>h) where the Agency is an individual or partnership, any event analogous to these listed in this definition occurs in relation to that individual or partnership; or</li> <li>i) any event analogous to these listed in this definition occurs under the law of any other jurisdiction.</li> </ul>
<b>Intellectual Property Rights or IPR</b>	<p>These mean:</p> <ul style="list-style-type: none"> <li>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</li> <li>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</li> <li>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.</li> </ul>
<b>Invitation to Tender</b>	The invitation to tender for this Framework Agreement issued by CCS on <b>[Date]</b> .
<b>Key Performance Indicators (KPIs)</b>	The performance measurements set out in Section 2 (Services offered).
<b>Key Sub-Contractor</b>	Any Sub-Contractor which is listed in Framework 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.

<b>Know-How</b>	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 Agency's or CCS's possession before the Appointment Date.
<b>KPI Targets</b>	The acceptable performance levels for each KPI set out in Section 2 Clause 2.8. (Services offered).
<b>Law</b>	Any Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, judgment of a relevant court of law, or directives or requirements of any Regulatory Body.
<b>Letter of Appointment</b>	A letter in, or substantially in, the form set out in Part 1 of Framework Schedule 4 (Letter of Appointment and Call-Off Terms) to be used by Clients to order Services.
<b>Losses</b>	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.
<b>Management Charge</b>	<p>The sum payable by the Agency to CCS on all Charges for the Services invoiced to Clients (net of VAT) in each Month throughout the Term and thereafter until the expiry or earlier termination of all Call-Off Contracts entered into pursuant to this Framework Agreement. The Management Charge will apply in the following way:</p> <ul style="list-style-type: none"> <li>a) All Charges for Services invoiced to Clients will be charged at 0.5%. This charge is in consideration of the management and administration of this Framework Agreement. The Agency shall not pass this charge through to the Client. CCS may increase this 0.5% element of the Management Charge after the first Contract Year.</li> <li>b) All Charges for Services invoiced to Clients who are Central Government Bodies will be charged at an additional 1%. This charge is payable by the Client to the Agency on behalf of CCS. Agencies should add this charge to their charges for all Services invoiced to Clients.</li> </ul>
<b>Management Information</b>	The management information specified in Framework Schedule 5 (MI Reporting Template).
<b>MI Default</b>	An Agency is deemed to be in MI Default if it either:



	<ul style="list-style-type: none"> <li>a) has 2 consecutive MI Failures, or</li> <li>b) has 2 MI Failures in any rolling 6 Month period.</li> </ul>
<b>MI Failure</b>	<p>If any of the following occur, CCS can treat it as an “MI Failure”:</p> <ul style="list-style-type: none"> <li>a) there are material omissions or errors in the Agency’s MI Report;</li> <li>b) the Agency uses the wrong template for the MI Report</li> <li>c) the Agency’s MI Report including any nil return is late.</li> </ul>
<b>MI Report</b>	A monthly report from the Agency to CCS containing Management Information, submitted in accordance with Section 6 (Management Information and management charges).
<b>MI Reporting Template</b>	The form of report set out Framework Schedule 5 (MI Reporting Template) setting out certain Management Information the Agency is required to supply to CCS.
<b>Ministry of Justice Codes</b>	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.
<b>Ministry of Justice Guidance</b>	Ministry of Justice Guidance in relation to section 9 of the Bribery Act 2010. It is available at <a href="http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf">http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf</a> .
<b>MISO</b>	'Management Information System Online', an online portal located at <a href="https://miso.ccs.cabinetoffice.gov.uk">https://miso.ccs.cabinetoffice.gov.uk</a> provided by CCS for collection and receipt of Management Information.
<b>Month</b>	An entire calendar month. “Monthly” shall be interpreted accordingly.
<b>Occasion of Tax Non-Compliance</b>	<p>This is where any tax return of the Agency 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"> <li>a) a Relevant Tax Authority successfully challenging the Agency 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</li> <li>b) the failure of an avoidance scheme which the Agency was involved in, and which was, or should</li> </ul>

	<p>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</p> <p>c) any tax return of the Agency 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.</p>
<b>OJEU Notice</b>	The advertisement for this procurement issued in the Official Journal of the European Union with the number [Number].
<b>Open Book Data</b>	<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 Call -Off Contracts, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> <li>a) the Agency'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;</li> <li>b) operating expenditure relating to the provision of the Services including an analysis showing:</li> <li>c) the unit costs and quantity any consumables and bought-in goods and services;</li> <li>d) manpower resources broken down into the number and grade/role of all Agency personnel (free of any contingency) together with a list of agreed rates against each manpower grade; and</li> <li>e) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Agency profit margin.</li> </ul>
<b>Order</b>	An order from a Client to an Agency for the provision of Services, placed in accordance with the Call-Off Process.
<b>Party</b>	Either CCS or the Agency.
<b>Persistent Failure</b>	<p>Any of:</p> <ul style="list-style-type: none"> <li>a) 2 or more failures by the Agency to accept an Order within 2 Working Days of receipt in any rolling period of 12 Months (other than when the</li> </ul>

	<p>Agency's failure to accept an Order is due to a conflict of interest), or</p> <p>b) 2 or more failures by the Agency to provide Management Information by the Reporting Date in any rolling period of 12 Months, or</p> <p>c) 2 or more failures by the Agency to meet the KPI Targets (whether the failures relate to the same or different KPI Targets) in relation to one or more Call-Off Contracts in any rolling period of 12 Months</p>
<b>Proceedings</b>	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.
<b>Process/ Processing</b>	This refers specifically to the processing of data under the Data Protection Act 1998. For the purposes of this Framework Agreement, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly.
<b>Prohibited Act</b>	<p>To directly or indirectly offer, promise or give any person working for or engaged by a Client or CCS a financial or other advantage to:</p> <p>a) induce that person to perform improperly a relevant function or activity</p> <p>b) reward that person for improper performance of a relevant function or activity</p> <p>c) commit any offence: ]</p> <ul style="list-style-type: none"> <li>• under the Bribery Act 2010</li> <li>• under legislation creating offences concerning Fraud</li> <li>• at common Law concerning Fraud</li> <li>• committing or attempting or conspiring to commit Fraud.</li> </ul>
<b>Proposal</b>	The proposal submitted by a Framework Agency in response to a Brief.
<b>Regulations</b>	The Public Contracts Regulations 2015.
<b>Regulatory Body</b>	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 Framework Agreement.
<b>Relevant Person</b>	Any employee, agent, servant, or representative of CCS, any Client or any other public body.

<b>Relevant Tax Authority</b>	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Agency is established.
<b>Reporting Date</b>	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.
<b>Request for Information</b>	A request for information relating to this Framework Agreement, any Call-Off 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.
<b>Self-Audit Certificate</b>	A certificate in the form set out in Framework Schedule 6 (Self-Audit Certificate) to be provided to CCS in accordance with Clause 7.2.
<b>Service Levels</b>	Any particular service levels detailed in Call-Off Contracts.
<b>Services</b>	The provision of services to provide a complete campaign solution to Clients as described in Section 2 (Services) which the Agency can provide to Clients and may include products supplied in connections with or ancillary to the services described.
<b>Services Requirements</b>	The requirements of CCS or any Client for the Services.
<b>Specific Change in Law</b>	A Change in Law that relates specifically to the business of CCS and/or Clients which would not affect a Comparable Supply.
<b>Statement of Work</b>	The document outlining the agreed body of works to be undertaken as part of the Call-Off Contract between the Client and the Agency.
<b>Sub-Contract</b>	Any contract or agreement or proposed agreement between the Agency and a Sub-Contractor.
<b>Sub-Contractor</b>	Any person engaged by the Agency to provide to the Agency any part of the Services or any services necessary for the provision of the Services.
<b>Tender</b>	The Invitation to Tender and the Agency's response to it.
<b>Term</b>	The duration of this Framework Agreement from the Appointment Date to the Expiry Date or earlier termination of this Framework Agreement.

<b>Termination Notice</b>	A written notice of termination given by one Party to the other, setting out the date on which it intends to terminate the Framework Agreement and why.
<b>Transparency Principles</b>	The principles set out at <a href="http://www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public">www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public</a> detailing the requirement for the proactive release of contract information under the Government's transparency commitment.
<b>Transparency Reports</b>	Information relating to the Services and performance of this Framework Agreement which the Agency is required to provide to CCS in accordance with its reporting requirements under this Framework Agreement.
<b>Working Day</b>	Any day other than a Saturday, Sunday or public holiday in England and Wales.

## 2. INTERPRETATION

- 2.1 The interpretation and construction of this Framework 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 Framework Agreement for ease of reference only and will not affect the interpretation or construction of this Framework Agreement
  - 2.1.7 references in this Framework Agreement to any "Section", "Clause" or "Framework Schedule" without further designation will be construed as a

reference to the clause or sub-clause or schedule to this Framework Agreement so numbered

2.1.8 references in this Framework 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 framework schedule to this Framework 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 Framework Agreement and the terms and conditions of any Call-Off Contract, the conflict shall be resolved in accordance with the following order of precedence:

2.2.1 this Framework Agreement

2.2.2 the Letter of Appointment

2.2.3 the Call-Off Terms and

2.2.4 any other document referred to in the Call-Off Contract (not including this Framework Agreement).

## FRAMEWORK SCHEDULE 2: KEY SUB-CONTRACTORS

- 1.1 The following Sub-Contractors shall be deemed Key Sub-Contractors for the purposes of this Framework Agreement.

### Table of Sub-Contractors

**[Table to be inserted from Tender]**

## FRAMEWORK SCHEDULE 3: CHARGING STRUCTURE

### 1. General provisions

- 1.1 The Framework Prices set out in this Framework Schedule 3 are the maximum that the Agency may charge when fulfilling any Call-Off Contract.
- 1.2 The Agency acknowledges and agrees that any Charges submitted in relation to a Further Competition Procedure will be equal to or lower than the Framework Prices.
- 1.3 The Framework Prices may be reviewed and adjusted if necessary in accordance with 8.12 (Value for Money).
- 1.4 The Framework Prices cannot be increased during the first 2 Contract Years.

### 2. Framework prices

- 2.1 The Framework Prices comprise the maximum daily rates for each category of the Agency staff and (in each case exclusive of VAT) are as set out in Annex 1.
- 2.2 Daily rates are based on a Working Day consisting of 8 hours (excluding lunch break).
- 2.3 Unless a Client agrees otherwise under the terms of a specific Call-Off Contract, the Agency cannot charge for any more than 8 working hours in one day.
- 2.4 All daily rates are inclusive of travel, subsistence, lodging and related expenses. Any additional charges shall be calculated as detailed in the Letter of Appointment.

### 3. Adjustment of Framework Prices

- 3.1 The Agency may voluntarily reduce its Framework Prices at any time during the Term.
- 3.2 Apart from such voluntary reductions, the Framework Prices can only be varied:
  - 3.2.1 due to a Specific Change in Law in relation to which the Parties agrees that a change is required to all or part of the Framework Prices in accordance with Clause 11.5, or
  - 3.2.2 where a review of the Framework Prices is agreed by the Parties, in accordance with the provisions of paragraph 4 of this Framework Schedule 3.

### 4 Review of the Framework Prices

- 4.1 Subject to paragraph 4.2, the Framework Prices will remain fixed for 2 Years from the Appointment Date.
- 4.2 Promptly on the next Working Day following the second anniversary of the Appointment Date (the “**Review Date**”), the Agency shall assess the level of the Framework Prices.
- 4.3 If the Agency determines that some or all of the Framework Prices can be reduced, it will notify CCS in writing of the level of reduction and when it will come into effect.
- 4.4 If the Agency determines that some or all of the Framework Prices need to be increased, the Agency shall notify CCS in writing of its request to increase some or all of the Framework Prices. It must provide CCS with a list of the Framework Prices it



wishes to vary together with written evidence of the justification for the requested increase. This should include:

- 4.4.1 a breakdown of the profit and cost components that comprise the relevant rate
  - 4.4.2 details of the movement in the different identified cost components of the relevant rate
  - 4.4.3 reasons for the movement in the different identified cost components of the relevant rate
  - 4.4.4 evidence that the Agency has attempted to mitigate against the increase in the relevant cost components, and
  - 4.4.5 the date on which the Agency wants the Variation to come into force
- 4.5. CCS may in its absolute discretion, grant or refuse the Agency's request (in whole or in part).

## **5. Implementation of adjusted Framework Prices**

- 5.1 Variations to the Framework Prices will take effect on a date determined by CCS.
- 5.2 Variations do not affect the Charges payable by a Client under a Call-Off Contract which had already been agreed before the variation takes effect.
- 5.3 Any variation to the Charges payable under a Call-Off Contract must be agreed in writing between the Agency and the relevant Client and implemented in accordance with the provisions applicable to the Call-Off Contract.

## **6 E-commerce transactions with central government bodies**

- 6.1 The Agency accepts e-commerce as the preferred transacting model for all Government's purchasing transactions.

## ANNEX 1: RATES AND PRICES

Agencies should refer to the table below for the roles which would be considered under each of the categories.

CATEGORY OF SENIORITY	Minimum daily rate	Maximum daily rate
Board Level	£	£
Senior Level	£	£
Mid Level	£	£
Junior Level	£	£

### Examples of Roles

BOARD LEVEL ROLES	SENIOR LEVEL ROLES	MID LEVEL ROLES	1 JUNIOR LEVEL ROLES
Chairman	Head of Data Strategy	Project Manager	Account Executive
President	Head of Traffic	Account Manager	Analyst
CEO	Technical Director	Designer	Data Analyst
COO	Head of IA	Copywriter	Data Planner
Managing Partner	Senior Analyst	Brand Strategist	Data Consultant
Client Services Director	Head of Design	Strategist	Proof Reader
Board Account Director	Senior Producer (TV/Digital/Print/Events)	Account Planner	Typographer
Group Account Director	Senior Information Architect	Communications Planner	Art worker
MD/Partner	Head of Social Media	Media Planner	Art Buyer
Executive Creative Director	Strategy Director	Planning Manager	TV Assistant
Executive Planning Director	Head of Planning	Studio Designer	Account Executive
Chief Strategy Officer	Head of Information	Producer	Analyst/researcher
	Business Director	Traffic Manager	Artistic talent, e.g. Photographer, model
	Creative Director	TV Producer	IT Support

	Art Director	Interface Designer	PR Assistant
	Design Director	Information Architect	Systems Administrator
	Media Director	Editors	TV Production Executive
	Planning Director	Community Managers	Account Executive
	Director Data Intelligence	Content / Information Architect	
	Creative Services Director	Digital Designer	
		Digital/Web Producer	
		QA Tester / Manager	
		Test Manager	
		Graphics/Production Design	
		Technical Lead	
		Web Developer	
		Web Editor / Content Manager	
		UAX	
		Production Manager	
		Analytics/Insight Manager	
		Media Liaison Manager	
		Database Manager	
		Mobile App Developer	
		Social Media Manager	
		Planner	
		PR Consultant	
		Technical Developer	
		Creative Technologist	

## FRAMEWORK SCHEDULE 4: LETTER OF APPOINTMENT AND CALL-OFF TERMS

### Part 1: Letter of Appointment

[Letterhead of Client]

Dear Sirs

#### Letter of Appointment

This letter of Appointment is issued in accordance with the provisions of the Framework Agreement (RM3744) between CCS and the Agency dated [xxxx].

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

Order Number:	[ ]
From:	[ ] ("Client")
To:	[ ] ("Agency")

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

Services required:	Set out in Section 2 (Services offered) and refined by: · the Client's Brief attached at Annex A and the Agency's Proposal attached at Annex B; and [insert supplemental information if any]
--------------------	--

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

Call Off 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 Call-Off 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 Call-Off 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 Call-Off Contract, with a minimum limit of £[x] million for each individual claim ]</p>
Client billing address for invoicing:	[ ]
Alternative and/or additional provisions:	[ ]

#### FORMATION OF CALL OFF CONTRACT

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

**The Parties hereby acknowledge and agree that they have read this letter and the Call-Off Terms.**

**The Parties hereby acknowledge and agree that this Call-Off Contract shall be formed when the Client acknowledges (which may be done by electronic means) the receipt of the signed copy of this letter from the Agency within two (2) Working Days from such receipt.**

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

Name and Title:

Signature:

Date:

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

Name and Title:

Signature:

Date:

**ANNEX A**

**Client Brief**

To be used when framework is live

## ANNEX B

### Agency Proposal

To be used when framework is live

## Part 2: Call-Off Terms

To be used when framework is live



## FRAMEWORK SCHEDULE 5: MI REPORTING TEMPLATE

### 1. Management information template completion guidance notes

**1.1 Completion of your MI return:** Agencies 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 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.

**FRAMEWORK SCHEDULE 6: ANNUAL SELF-AUDIT CERTIFICATE**

[letterhead of Agency or Agency’s external auditor]

Crown Commercial Service  
9<sup>th</sup> Floor  
The Capital  
Old Hall Street  
Liverpool L3

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

Dear Sirs

We refer to the Campaign Solutions Framework Agreement RM3774 (the “**Framework Agreement**”) dated **xx.xx.xx** between the Minister for the Cabinet Office, acting through Crown Commercial Services (CCS) as CCS, and [NAME] as the Agency.

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

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

1. In our opinion the Agency has in place suitable systems for identifying and recording the transactions taking place under the provisions of the Framework Agreement.
2. We have tested the systems for identifying and reporting on Framework 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 Agency’s order processing/invoicing systems as Orders under the Framework
  - 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 Framework on maximum mark-ups, discounts, charge rates and fixed quotes (as applicable)

Yours faithfully

Name:.....

Signed:.....

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

Date:.....

## FRAMEWORK SCHEDULE 7: COMMERCIALLY SENSITIVE INFORMATION

### 1. Introduction

- 1.1 Framework Schedule 7 is designed to help Parties to identify the Agency Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA.
- 1.2 Without prejudice to CCS's obligation to disclose Information in accordance with Clauses 7.39 to 7.45 FOIA, CCS will, acting reasonably but in its sole discretion, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
1.	[19.08.2016]	[Hourly rates are sensitive and not to be disclosed]	[Indefinite]

## FRAMEWORK SCHEDULE 8: FRAMEWORK MANAGEMENT

### 1. Introduction

- 1.1 The successful delivery of this Framework Agreement will rely on the ability of the Agency and CCS to develop and maintain a strategic relationship, from award throughout the full Term of this Framework Agreement.
- 1.2 To achieve this, both Parties will need to adopt proactive framework 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 Framework Agreement.

### 2. Framework management

#### Framework Management Structure

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

#### Framework Review Meetings

- 2.4 Regular performance reviews will take place throughout the Term. These include:
  - Strategic Management Reviews
  - Management Review Meetings and
  - Operational Review Meetings.
- 2.5 The exact timings and frequencies of such Meetings will be determined by CCS following award of the Framework Agreement. It is anticipated that during the first 12 Months of the Framework Agreement, the structure and frequency of the meetings will be as set out in paragraphs 2.6 - 2.8 and 3.1 – 3.2 - below. Both Parties are expected to be flexible about the frequency, timings and content of these reviews.

#### Strategic Management Reviews

- 2.6 The Agency Representative and CCS Representative will meet every 12 Months. CCS sees these meetings as a vital element in developing a strategic relationship with the Agency and building in a positive working relationship. The content of these meetings will be agreed between both Parties at least 14 Working Days before the date of the Strategic Management Review. However, as a minimum they will consider:

- overall framework performance, including the Agency's supply chain performance, and its usage of SMEs to supply and/or deliver goods and services
- efficiency opportunities
- benchmarking, including progress against Government efficiency targets
- market conditions
- policy updates including emerging Government initiatives, and
- security and risk management

### **Management Review Meetings**

2.7 Management Review Meetings will be held every quarter between CCS, and the Agency's Framework Manager(s) and representatives from key Clients. The meeting agenda will cover, but not be limited to, the following:

- transition and on-boarding of key new customers (milestones and progress against targets) including contract compliance and Agency sector strategies (key customers can be defined as those who are of a strategic importance to the success of the framework)
- performance against Key Performance Indicators (KPIs)
- framework revenue and savings performance, submission of MI and sector revenue performance
- incident and problem management
- forward planning, opportunities and future efficiencies including standardisation and rationalisation
- Client Satisfaction Surveys (quality and delivery of the Services etc);
- new service roadmaps, and
- support to category teams relating to cashable benefits

2.8 The information reviewed at the meetings will be based on MI provided by the Agency.

### **3. Operational Review Meetings**

3.1 Operational Review Meetings will be held every quarter between CCS and the Agency's framework 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 Framework 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 framework management process as outlined in this Schedule 8.
- 4.2 The Agency shall establish processes to monitor its performance against the agreed KPIs in order to report progress to CCS and Clients. The Agency 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 Agency performs its obligations to fulfil the Framework Agreement.
- 4.4 The Agency's performance against these KPIs will be reviewed during the Framework Review Meetings, and
- 4.5 The Agency 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 Agency.

#### **5. Efficiency tracking performance measures**

- 5.1 The Agency shall cooperate with CCS to develop efficiency tracking performance measures for the Framework Agreement. This includes but is not limited to:
- tracking uptake and product costs, in order to demonstrate that Clients are buying more smartly
  - developing additional KPIs to ensure that the Framework 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 Agency during the Framework 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 framework management activities as outlined in this Schedule 8.

#### **6. Escalation procedure**

- 6.1 If CCS and the Agency 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 Agency's Representative to determine the best course of action. This involve organising an ad-hoc meeting to discuss the performance issue specifically.
- 6.3 If CCS' Representative and the Agency's Representative fail to reach a resolution, the matter will be dealt with by following the Dispute Resolution Procedures (Clause 17.4-17.13).

## FRAMEWORK SCHEDULE 9: GUARANTEE

**[Guidance Note: this is a draft form of guarantee which can be used to procure either a Framework Guarantee or a Call-Off 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 Client 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 Framework Guarantee in favour of CCS, this paragraph numbered (2) above will set out the details of CCS. Where it is used to procure a Call-Off Guarantee in favour of a Client this paragraph numbered (2) above will set out the details of the relevant Client]**

#### WHEREAS:

- (A) The Guarantor has agreed to guarantee all of the Agency'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:

RM3774 - Campaign Solutions  
 Framework Agreement  
 Attachment 4  
 Version 1

© Crown Copyright 2016



## 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 Framework Guarantee or Call-Off Guarantee]**

<b>["CCS"]</b>	has the meaning given to it in the Framework Agreement]
<b>["Beneficiary"]</b>	means [CCS] [insert name of the Client with whom the Agency enters into a Call-Off Contract]
<b>["Call-Off Contract"]</b>	has the meaning given to it in the Framework Agreement]
<b>["Framework Agreement"]</b>	means the Framework Agreement for the Services made between CCS and the Agency]
<b>["Guaranteed Agreement"]</b>	means [the Framework Agreement] [the Call-Off Contract] made between the Beneficiary and the Agency on [insert date]]
<b>["Guaranteed Obligations"]</b>	means all obligations and liabilities of the Agency to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Agency to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement
<b>["Services"]</b>	has the meaning given to it in the Framework 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 Agency 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 Agency 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 Agency 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 client basis, together with any disbursements) of whatever nature which may result from a failure by the Agency 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 Agency 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 Agency'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 Agency, or if the Guaranteed Agreement is disclaimed by a liquidator of the Agency or the obligations of the Agency 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 Agency 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 Agency 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 Agency, 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 Agency, 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 Agency 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 Agency or the Guarantor or any third party in any court
  - make or file any claim in a bankruptcy or liquidation of the Agency or any third party
  - take any action whatsoever against the Agency 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 Agency 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 Agency's obligations and
  - to prove in the liquidation or insolvency of the Agency
- 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 Agency
  - 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 Agency 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 Agency
  - claim any contribution from any other guarantor of the Agency'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 Agency or
  - claim any set-off or counterclaim against the Agency
- 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:
  - 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 or
  - 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 Clients, with the prior approval of CCS, enforce the following provisions of this Framework Agreement which are capable of being for the benefit of any Client as a third-party beneficiary in accordance with the Contracts (Rights of Third Parties Act 1999. These are:
- Section 3 (How Services will be bought (Call-Off Process))
  - Clause 5.1 (Warranties and Representations)
  - Clause 7.11 to 7.12 (Client Satisfaction Monitoring)
  - Clause 7.13 to 7.25 (Confidentiality)
  - Clause 9.20 to 9.25 (Consequences of Termination and Expiry)
  - Clause 9.26 to 9.27 (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 Agency] [a suitable alternative to be agreed if the Agency'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



## FRAMEWORK SCHEDULE 10: TENDER

**FRAMEWORK SCHEDULE 11: 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

**[insert name of Agency]** (“**the Agency**”)

1. This Framework 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 Framework Agreement.
3. The Framework 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 Agency

Signature

Date

Name (in Capitals)

Address

