



**Crown
Commercial
Service**

Annex Number 1

Terms and Conditions of Contract for Services

Interpretation

1.1. In these terms and conditions:

“Agreement”	means the contract between (i) the Customer acting as part of the Crown and (ii) the Supplier constituted by the Supplier’s countersignature of the Award Letter and includes the Award Letter and Annexes;
“Award Letter”	means the letter from the Customer to the Supplier printed above these terms and conditions;
“Central Government Body”	means a body listed in one of the following subcategories 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: <ul style="list-style-type: none"> (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
“Charges”	means the charges for the services as specified in the Award Letter;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Customer”	means the person identified in the letterhead of the Award Letter;
“Customer Product”	Customer Product” means Customer’s proprietary software product identified in Exhibit A and licensed separately to Customer’s end users, with which the Software will integrate
“Date of Delivery”	means that date by which the services are delivered to the Customer, .
“Deliver”	means hand over the services to the Customer at the address and on the date

specified in the Award Letter, which shall include unloading and any other specific arrangements agreed in accordance with Clause 6. Delivered and Delivery shall be construed accordingly.

“DPA”	means the Data Protection Act 1998;
“FOIA”	means the Freedom of Information Act 2000;
“Information”	has the meaning given under section 84 of the FOIA;
“Party”	the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;
“Purchase Order Number”	means the Customer’s unique number relating to the order for Service to be supplied by the Supplier to the Customer in accordance with the terms of the Agreement;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Software”	means Supplier’s proprietary software programs licensed to Customer and identified in Exhibit A.
“Specification”	means the instructions, manuals or other materials regarding the use of the Software generally supplied by the Supplier to the Customer, as ; modified from time to time by Supplier.
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Supplier; Supplier at all times shall remain responsible for its sub-contractors engaged in the performance of the Supplier’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where applicable;
“Supplier”	means the person named as Supplier in the Award Letter;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2. In these terms and conditions, unless the context otherwise requires:

- 1.1.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.1.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.1.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.1.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that

enactment; and

2. Basis of Agreement

- 2.1. The Award Letter constitutes an offer by the Customer to purchase the services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2. The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by the Customer of a copy of the Award Letter countersigned by the Supplier.

3. Supply of Services

- 3.1. In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the services to the Customer subject to and in accordance with the terms and conditions of the Agreement.
- 3.2. In supplying the services, the Supplier shall reasonably co-operate with the Customer in matters relating to the supply of services.
- 3.3. The Supplier shall supply the services in accordance with the Agreement. The Supplier warrants, represents, undertakes and guarantees that the services supplied under the Agreement shall:

comply with any applicable statutory and regulatory requirements relating to the delivery of the services;

substantially conform with the Specification for a period of 90 days from delivery to the Customer ("Warranty Period"). For errors during the Warranty Period, Supplier shall use commercially reasonable efforts to remedy or supply a temporary fix to the Software. Such efforts shall be the exclusive remedy for breach of the foregoing warranty. THIS WARRANTY AND REMEDY IS THE SOLE AND EXCLUSIVE WARRANTY AND REMEDY OFFERED BY SUPPLIER IN CONNECTION WITH THE SOFTWARE. THERE ARE NO OTHER WARRANTIES RELATED TO THE SOFTWARE OR SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. SUPPLIER DOES NOT WARRANT THAT THE SOFTWARE WILL BE ERROR FREE OR OPERATE IN AN UNINTERRUPTED FASHION, WILL MEET THE REQUIREMENTS OF CUSTOMER OR END USERS, OR THAT THE SOFTWARE WILL FUNCTION PROPERLY WHEN USED IN CONJUNCTION WITH ANY OTHER SOFTWARE OR HARDWARE;

and the Supplier itself shall, comply with all applicable laws.

- 3.4 Subject to Customer's compliance with this Agreement (which includes timely payment of all fees), Supplier will provide updates and technical support services to Customer as described in Exhibit B ("Support Services") during the Term (as defined in Exhibit C).

4. Customer Obligations

- 4.1 Customer shall not itself, or through any other party: (i) sell, lease, license, sublicense or allow others to use the Software or the Specification, except to the limited extent the Software is integrated into the Customer Product and used by Customer end users; (ii) write or develop any derivative software or any other software program based upon the Software; (iii) use the Software not in conjunction with the Customer Product to provide processing services or “service bureau” services to third parties; or (iv) use the Customer Product to compete with the Software. Customer shall not allow any user of the Customer Products to reverse engineer the Software, in whole or in part.
- 4.2 Customer shall use the Software only in accordance with the Specifications and this Agreement. Customer shall comply with all applicable law during the exercise of its rights in this Agreement (including all export laws). Upon Supplier’s reasonable request, Customer shall provide Supplier with information and access required by Supplier to perform its obligations hereunder. Customer recognizes that Supplier’s performance of its obligations shall require Customer’s reasonable assistance and direction, and is conditioned upon the timely performance and completion of certain activities that may be required of Customer. Supplier shall not be liable for delays in performance of its obligations in this Agreement to the extent they arise from Customer’s failure to timely perform and complete such activities.
- 4.3 Software supplied by Supplier may be subject to export laws and regulations. Customer will comply with all applicable restrictions regarding exports, re-exports and transfers, including obtaining any required U.S. or other country licenses, authorizations, or approvals. Customer will inform each of its users (where the circumstances suggest the user may be exporting) of applicable restrictions on exports, re-exports, or transfers at the time Customer shares or otherwise makes available any Software supplied by Supplier to such user. Customer agrees to maintain controls adequate to comply with applicable export control laws and regulations. Non-exclusive examples of export restrictions with which Customer must comply include, without limitation, the U.S. Export Administration Regulations (EAR) including licensing requirements managed by the U.S. Commerce Department’s Bureau of Industry and Security (BIS), anti-boycott provisions of the EAR, the Office of Foreign Assets Control (“OFAC”) of the US Department of Treasury’s economic and trade sanctions (e.g., “do not sell” lists, based on country) and OFAC’s restrictions on selling to specific persons or entities, known as “Specially Designated Nationals” or SDNs.

5. Charges, Payment and Recovery of Sums Due

- 5.1. The Charges for the services shall be as set out in the Exhibit C, which is further described in the Award Letter, and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the services. .
- 5.2. All amounts stated are exclusive of VAT which shall be charged at the prevailing rate.
- 5.3. Upon execution of this Agreement, the Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the services supplied in the invoice period.

- 5.4. In consideration of the supply of the services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days from the date of the invoice.
- 5.5. If there is a good faith dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. Any good faith dispute in the fees shall be resolved through the dispute resolution procedure detailed in clause 20.
- 5.6. If a payment of an amount not subject to a good faith dispute is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998 until the amounts are paid, together with all costs and expenses incurred in collection, including reasonable attorneys' fees.,
- 5.7. the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
- provisions having the same effects as clauses 4.3 to 4.7 of this Agreement; and
- a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effects as 4.3 to 4.8 of this Agreement.
- In this clause 4.8, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.8. Any overpayments made by Customer to Supplier may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer.

6. Intentionally Omitted

7. Delivery

7.1. The Supplier shall Deliver the services to the Customer on or by the Date of Delivery. .

7.2.

8. Intentionally Omitted.

9. Staff

9.1. If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:

refuse admission to the relevant person(s) to the Customer's premises;

9.2. The Supplier shall:

ensure that all Staff are vetted in accordance with the Staff Vetting Procedures and if requested,;

if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and

procure that all Staff comply with this Agreement.

10. Assignment and Sub-Contracting

- 10.1. The parties shall not without the written consent of the other assign, sub-contract, or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement without the consent of the other party, which shall not be unreasonably withheld. However, either party may assign this Agreement to any affiliate, or to a person or entity into which it has merged or which has otherwise succeeded to all or substantially all of its business or assets to which this Agreement pertains, by purchase of stock, assets, merger, reorganization or otherwise, and which has assumed in writing or by operation of law its obligations under this Agreement. Any assignment or attempted assignment in breach of this section shall be void. This Agreement shall be binding upon and shall inure to the benefit of the parties' respective successors and assigns. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

11. Intellectual Property and Indemnity

11.1. Intellectual Property

- 11.1.1. Subject to Customer's compliance with this Agreement, the Supplier grants the Customer a non-exclusive, non-transferable licence) to use the Software and Specifications solely in conjunction with the Customer Product. Customer shall have no right to the Software or Specifications except to the extent expressly granted in this section 11.1.

11.1.2. Customer acknowledges that, as between Supplier and Customer, Supplier owns all right, title and interest in and to the Software, Specifications and all related modifications or enhancements, whether created by Supplier or any other party (collectively, the "Supplier Works"). If ownership of any of the Supplier Works does not immediately and exclusively vest in Supplier, then, without further consideration, Supplier assigns all ownership of Supplier Works to Supplier, immediately upon its creation, automatically and without further consideration or action by any party. At Supplier's reasonable request, Customer shall perform any acts to transfer, perfect and defend Supplier's ownership of the Supplier Works. Customer may make a limited number of copies of the Supplier Works solely to exercise the rights expressly granted to Customer in this Agreement; provided, that Customer shall reproduce all copyright and other proprietary notices on all copies of the Supplier Works.

11.2. Indemnity

- 11.2.1. The Supplier shall indemnify, and keep indemnified, the Customer in full against all cost, expenses, damages and losses, including reasonable legal and other professional fees

awarded against the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with Customer's authorized use of the services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

- 11.3. The Customer shall promptly notify the Supplier of any infringement claim made against it relating to any services and, subject to any statutory obligation requiring the Customer to respond, shall permit the Supplier to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Customer shall give the Supplier such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim. To the extent that Supplier is prejudiced by Customer's failure to comply with the foregoing requirements, Supplier shall not be liable hereunder.
- 11.4 Supplier may, at its option and expense, either: (i) procure for Customer the right to use the Software; (ii) replace or modify the Software, with other suitable and reasonably equivalent technology so that the Software becomes noninfringing; or (iii) if it is not commercially reasonable to take the actions specified in items (i) and (ii) immediately preceding, terminate this Agreement. Notwithstanding anything to the contrary, Supplier shall have no infringement indemnity obligation hereunder: (A) for any Customer Products, (B) for any other hardware or software that is combined with the Software to the extent that the infringement would not have occurred in the absence of such combination, (C) to the extent Customer continues infringing activity or using infringing Software after (1) being notified thereof, and (2) being provided at no additional cost to Customer modifications that would have avoided the infringement without material loss of performance, compatibility or functionality, and/or (D) to the extent the infringement arises as a result of Customer's use of the Software is in breach of the terms of this Agreement.
- 11.5 Customer shall indemnify and defend Supplier from and against all damages arising from the Software Modifications, the Customer Product and/or its breach of this Agreement.
- 11.6 THE PROVISIONS OF THIS SECTION 11 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF SUPPLIER TO CUSTOMER WITH RESPECT TO ANY INFRINGEMENT OF PATENTS, COPYRIGHTS, OR OTHER INTELLECTUAL PROPERTY RIGHTS BY THE SOFTWARE OR DOCUMENTATION.

12. Governance and Records

- 12.1. Each Party shall:

attend progress meetings at the frequency and times mutually agreed by the Parties and ensure that its respective representatives are suitably qualified to attend such meetings, and the Supplier shall submit progress reports to the Customer at the times and in the format mutually agreed by the Parties.
- 12.2. The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the services supplied under it, and all payments made by the Customer. During the Term, the Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

13. Confidentiality, Transparency and Publicity

13.1. Subject to clause 12.2, each Party shall:

Treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

13.2. Notwithstanding clause 12.1, a Party may disclose Confidential Information which it receives from the other Party:

where disclosure is required by applicable law or by a court of competent jurisdiction, provided the receiving Party gives the disclosing Party prior notice so that it may seek a protective order, or other remedies available at law, to prevent such disclosure;

to its auditors or for the purposes of regulatory requirements;

on a confidential basis, to its professional advisers;

to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 12.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

where the receiving Party is the Customer:

- (a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 12.

13.3. The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

14. Freedom of Information

- 14.1. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

transfer to the Customer all Requests for Information relating to the Agreement that it receives as soon as practicable;

provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

- 14.2. The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier (including commercially sensitive information). In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, to give the Supplier advance notice to draw the disclosure to the Supplier's attention after any such disclosure

- 14.3. Notwithstanding any other provision in the Agreement, if Customer receives a FOIA request, it will promptly notify Supplier prior to responding to the FOIA request so that Supplier may have an opportunity to challenge the disclosure or, with the assistance of the Customer, apply an exclusions available at law. If the Supplier is unable to successfully prevent the disclosure of the Agreement or its contents, the Customer may consult with the Supplier to inform Supplier of its proposed redactions and Supplier shall have the opportunity to provide feedback, in which Customer shall incorporate Supplier's feedback the redacted response to the FOIA request, provided at all times both parties shall comply with the provisions of the FOIA.

15. Protection and Security of Data

- 15.1. The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.

- 15.2. When handling Customer data, the Supplier shall ensure the security of the data is maintained in line with the security requirements of this Agreement.

16. Liability

16.1. The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.

16.2.

The aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to fees paid by the Customer to the Supplier in the preceding twelve (12) months that gave rise to the claim; and

except in the case of claims arising under clauses 10.1.2 and 19.3, in no event shall either Party be liable to the other Party for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special, punitive or consequential loss or damage.

16.3. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

death or personal injury caused by its negligence or that of its Staff;

fraud or fraudulent misrepresentation by it or that of its Staff;

any other matter which, by law, may not be excluded or limited.

16.4. The Supplier's liability under the indemnity in clauses 11.2 shall be limited to the greater of 5x fees paid in the preceding twelve (12) months or \$500,000..

17. Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such

circumstances continue for a continuous period of more than 30 days, either Party may terminate the Agreement after five (5) days written notice to the other Party.

18. Term and Termination

18.1. Term

18.1.1. Unless earlier terminated pursuant to Section 18, the rights and obligations in this Agreement shall commence on the Effective Date, as set forth in Exhibit C, and shall last for one (1) year ("Term"). The Term may be extended for additional successive terms of twelve (12) months each, beyond the initial Term, upon mutual written agreement of the Parties at the rates set forth in Exhibit C.

18.2. Without prejudice to any other right or remedy it might have, either Party may terminate the Agreement by giving the other Party written notice of:

a Party's material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Party receiving notice specifying the breach and requiring it to be remedied;

a Party becoming insolvent, or if an order is made or a resolution is passed for the winding up of a Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of a Party's assets or business, or if a Party makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.1.6) in consequence of debt in any jurisdiction; or

fails to meet in the allotted timeframe, or the agreed obligations per the Specifications of this Agreement (Annex 3).

18.3. The Supplier shall notify the Customer as soon as practicable of any change of control.

18.4. Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this Agreement for provisions which by their nature should survive termination.

18.5. Upon termination or expiry of the Agreement, the Supplier shall:

return all requested documents, information and data to the Customer as soon as reasonably practicable.

19. Compliance

19.1. The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer

shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.

19.2. The Supplier shall:

comply with the reasonable requirements of the Customer's security arrangements on Customer's premises;

comply with all the Customer's health and safety measures on Customer's premises;

notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury;

perform its obligations under the Agreement in accordance with all applicable equality Law;

20. Prevention of Fraud and Corruption

20.1. Each Party shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

20.2. Each Party shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff (including its shareholders, members and directors) in connection with the Agreement and shall notify the other Party promptly if it has reason to suspect that any fraud has occurred or is occurring.

20.3. If a Party or the Staff engages in conduct prohibited by clause 20.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the the other Party may:

terminate the Agreement, provided that if Customer terminates pursuant to this section 20.3, the Customer shall be refunded all prepaid fees for the remainder of the Term hereunder; or

21. Dispute Resolution

21.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

21.2. If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 21.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the Parties. Each party shall

bear its own cost for mediation. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

- 21.3. If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

22. General

- 22.1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 22.2. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 22.3. The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 22.4. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 22.5. Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 22.6. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 22.7. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

23. Notices

- 23.1. Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 22.3, , or such other address as that Party may from time to time notify to the other Party in accordance with this clause.

23.2. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

23.3. Notices under clauses 17 (Force Majeure) and 18 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the name of the sender in clause 23.1.

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24. Governing Law and Jurisdiction

The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

Customer and Licensor agree to the foregoing, effective on the Effective Date of September 19, 2022.

The term of this agreement, as defined in Section 6, will be 12 months.

Customer
Cabinet Office

Licensor
Rustici Software, LLC

By:

September 9, 2022

Signature

22/09/2022

EXHIBIT A – Customer Product, Software

Customer Product

The name of the product is the Civil Service Learning website, known as CSL.

The website hosts all of the "core" curriculum that is available for civil servants and other public sector workers required for them to complete their mandatory and other learning for their roles.

Customer Rustici Engine Database: MySQL

Software to be licensed

The Rustici Engine ("Software") includes a set of REST resources for integrating with an existing application. The resources available are described in the documentation included in the Software package. The Software will enable the Customer Product to import, deliver, and track the SCORM 1.2, SCORM 2004 (2nd, 3rd, and 4th editions) AICC, cmi5, and Experience API (xAPI), LTI 1.1, and LTI 1.3 learning standards. Additionally, the Software includes an xAPI conformant Learning Record Store (LRS). The Software will also enable the Customer Product to import, deliver and track (via xAPI) MP4s, MP3s, PDFs, and URLs.

This project will include the delivery of the Software in addition to time allocated to support the integration of the Software, the Database selected above, and the Customer Product. This agreement includes the time required to integrate with a single database platform.

Customer must meet the server requirements for the Software. The Software is provided as both a Java application and a .NET application. The Java application requires that the customer provide a modern Java Application Server able to support Java 8. The .NET application requires a minimum of Windows Server 2008 and IIS7.

Additionally, the Software will require a Database Server, running MySQL, PostgreSQL, Oracle, or SQL Server. The Software provides a compiled Java web application (excluding source code) delivered as a WAR file.

Licensor will provide some sample content solely for testing purposes.

This solution allows for minimal modification to the existing Customer codebase. Those changes will be made by the Customer under direction from Licensor. All pricing assumes availability and cooperation from the Customer staff.

EXHIBIT B – Support Services

Code Updates

- Code updates will be provided when available and requested.
- Notification of patches and releases will be made via a portal at REDACTED. Detailed database scripts and documentation will be provided with code updates.
- Current development schedules indicate 1 to 2 code updates per year, although this is not a firm commitment. Code updates will be made to support many items including:
 - Increased feature sets
 - Bug and error fixes
 - Standards interpretations
- The Customer will complete maintenance integrations with guidance provided by Licensor. As always, changes to a Customer's code should be made *by the Customer*.
- Customer is expected to update to the most recent version of the Software on a timely basis. Patches provided by Licensor for Customer issues will be created for the most recent release of the Software. If that release occurred in the prior 4 months, Licensor commits to provide that patch against the prior major release at Customer's request. Patches against versions of the Software older than 4 months will be made at the discretion of the Licensor.
- Code updates do entitle Customer to subsequent releases of a previously purchased standard version (i.e. SCORM 2004 5th Edition) but do not necessarily entitle a Customer to a subsequent full standard release (i.e. SCORM 2020, should it ever come).

Third Tier Support

- Third tier support covers items related to the Software only.
- Content that will not function properly in the Software can be sent to Licensor for diagnosis, but not necessarily repair.
- Licensor will make a concerted effort to accommodate content that differs from the standard when it can be done without damaging the core standards support in the product.
- Licensor reserves the right to refuse to support content that either fails its respective test suite or differs from the standard technically.
- An initial response to support inquiries is typically provided within 1-2 business days.
- Support requests must be made via the support portal ([REDACTED](#)) or email to [REDACTED](#). Either will create a ticket which can be tracked by the Customer and licensor staff members.
- Licensor *does not* have expertise in server deployment or maintenance. Licensor's expertise is SCORM and learning standards. Licensor will attempt to provide *some* support for

items beyond its expertise, but cannot commit to have expertise beyond the learning standards.

EXHIBIT C - Fees

Total contract value = £379,485 (including any extension options)

All fees and reimbursable expenses are due and payable by Customer within 30 days of the date of invoice. Overdue payments shall accrue interest at a rate of one and one-half percent per month or partial month during which such amount was owed and unpaid, or the highest rate allowed by law, whichever is less.

Customer shall pay or reimburse Licensor for any excise, privilege, sales, use, customs, value added, and/or any other tax.

Customer Billing & Contact Information

Invoices to be delivered to:

Name: Cabinet Office

Email Address: REDACTED

Phone: N/A

Billing Address: REDACTED

Shipping Address:

Purchasing Contact Information:

Name: Civil Service HR Commercial Team

Email Address: REDACTED

Phone: N/A

Is a Purchase Order required? ☒ Yes ☐ No

PO#: _____

Is a Vendor Portal required? ☐ Yes ☒ No

Vendor Portal: _____

Usage counts to be provided by:

Name: REDACTED

Email Address: REDACTED