

## TfL Mando Group G-Cloud Order Form & Call-Off Terms

<b>Date</b>	28/09/2015	<b>Order Reference</b>	ICT11701b
-------------	------------	------------------------	-----------

**FROM:**

<b>Customer</b>	Transport for London <b>"Customer"</b>
<b>Customer's Address</b>	Transport for London, Windsor House, 42-50 Victoria Street, London, SW1H 0TL
<b>Invoice Address</b>	TfL Corporate, Accounts Payable, 1st Floor, PO Box 45276, 14 Pier Walk, London, SE10 1AJ  Telephone: 0343 222 5100  Fax: 020 3054 5331  email: accountspayable@tfl.gov.uk
<b>Principal Contact</b>	Name: Sanjeet Manku  Address: 3rd Floor, Petty France, Room 391/392, 55 Broadway, London SW1H 0DB  [Redacted]  Mobile:  [Redacted]

**TO:**

<b>Supplier</b>	Mando Group Limited <b>"Supplier"</b>
<b>Supplier's Address</b>	Liverpool Science Park  131 Mount Pleasant  Liverpool  Merseyside  L3 5TF
<b>Account Manager</b>	[Redacted]

**[PARENT COMPANY]**

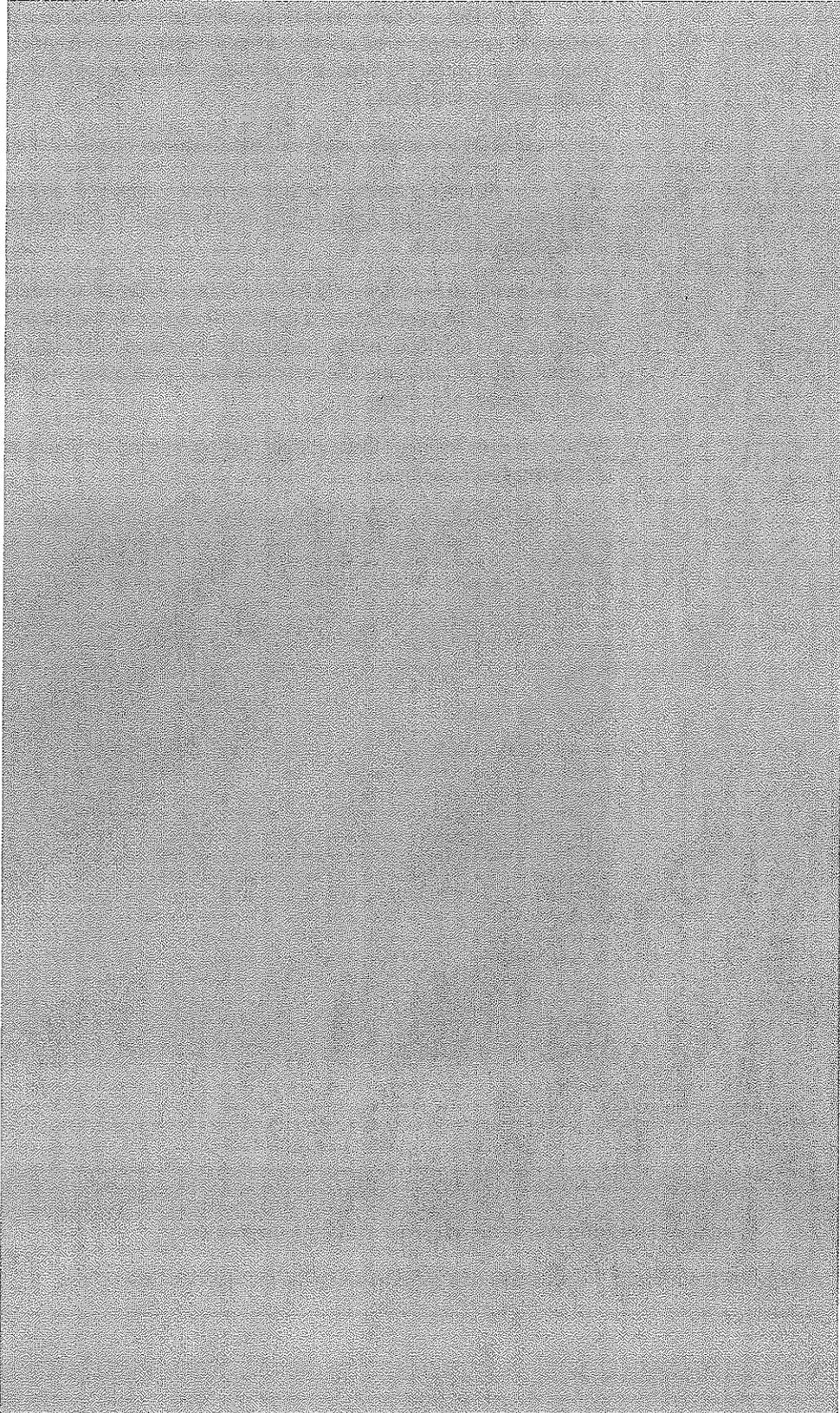
This Call-Off Agreement is conditional upon the provision of a Guarantee to the Customer from the Guarantor in respect of the Supplier.]

<b>[Parent Company]</b>	<b>[Company Name]</b>	<b>"Guarantor"</b>
<b>Parent Company Address</b>	<b>[Company Address]</b>	
<b>Account Manager:</b>	<b>Name:</b>	<b>[Account Manager Name]</b>
	<b>Address:</b>	<b>[Account Manager Address]</b>
	<b>Phone:</b>	<b>[Account Manager Address]</b>
	<b>Email:</b>	<b>[Account Manager email]</b>
	<b>Fax:</b>	<b>[Account Manger Fax (if applicable)]</b>

<b>1. TERM</b>
<p><b>1.1 Commencement Date</b></p> <p>This Call-Off Agreement commences on: 28/09/2015</p> <p><b>1.2 Expiry Date</b></p> <p>This Call-Off Agreement shall expire on:</p> <p>1.2.1 <del>[dd/mm/yyyy]</del>; or</p> <p>1.2.2 the second (2) anniversary of the Commencement Date; whichever is the earlier, unless terminated earlier pursuant to Clause CO-9 of the Call-Off Agreement.</p> <p><b>1.3 Services Requirements</b></p> <p>1.3.1 This Order is for the G-Cloud Services outlined below. It is acknowledged by the Parties that the volume of the G-Cloud Services utilized by Customer may vary from time to time during the course of this Call-Off Agreement, subject always to the terms of the Call-Off Agreement.</p> <p>1.3.2 G-Cloud Services</p> <p>1.3.2.1 Lot 1 IaaS <b>[Services]</b>;</p> <p>1.3.2.2 Lot 2 PaaS <b>[Services]</b>;</p> <p>1.3.2.3 Lot 3 SaaS <b>[Services]</b>; and / or</p> <p>1.3.2.4 Lot 4 Specialist Cloud Services Service ID 5-G4-1145-001; and</p> <p>1.3.2.5 G-Cloud Additional Services</p> <p><b>1. The Programme</b></p> <p>Customer has identified a programme of services (the 'Programme') as detailed in table 1.</p> <p>Customer shall, at its sole discretion, call-off Supplier Services to deliver Programme</p>

elements.

Customer may vary the content of the Programme from time to time.



**3. Acceptance Criteria/Constraints**

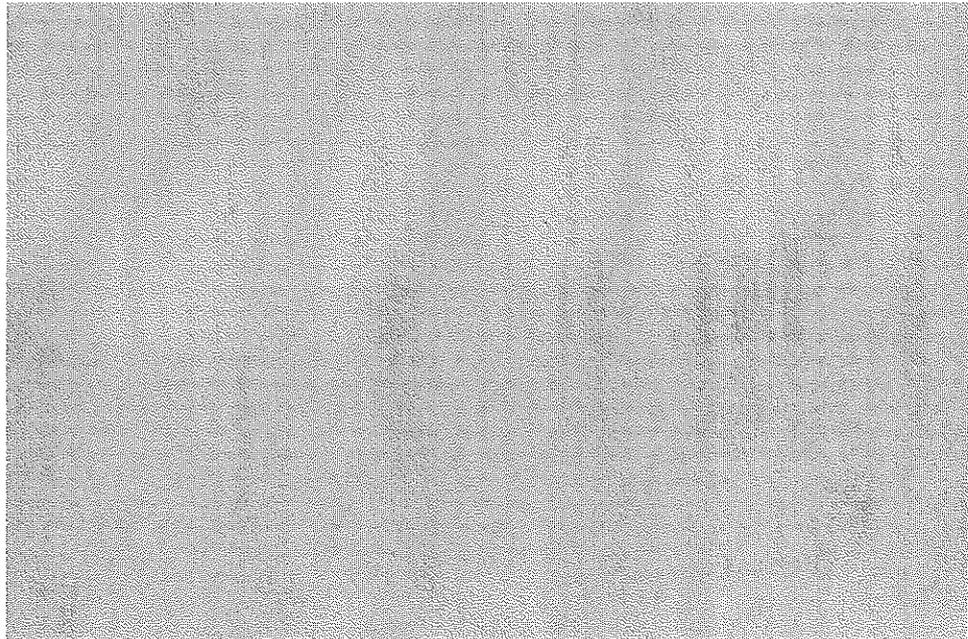
3.1 If Customer determines that any deliverable, whether by supplier or Customer, shall be subject to acceptance, it will define the acceptance criteria (including testing requirements) which the Supplier must meet. Service acceptance criteria are determined by Customer's Service team.

3.2 Acceptance will be via a review by the Customer Project Manager and/or Service Team.

3.3 All work completed by Supplier must comply with applicable laws and regulations, and conform to the requirements outlined in Customer's Digital Toolkit v4 - [www.tfl.gov.uk/toolkit](http://www.tfl.gov.uk/toolkit).

If a proposal is accepted, the Supplier or Customer will be committing to full compliance with these requirements. Where a specific requirement or standard is not yet available online at [www.tfl.gov.uk/toolkit](http://www.tfl.gov.uk/toolkit), the Supplier must seek clarification from their Customer contact, who will clarify requirements in writing. Once confirmed, these must be complied with as a basis of acceptance.

Work that does not meet these criteria may be rejected or require additional work completed at the Supplier's expense.



**2. PRINCIPAL LOCATIONS**

**2.1 Principal locations where the services are being performed**

At Supplier premises or TfL premises as agreed between the parties from time to time.

**3. STANDARDS**

**3.1 Quality Standards**

TfL design and accessibility standards as provided or directed (in the case of standards published by 3<sup>rd</sup> parties) by Customer to the Supplier from time to time.

**3.2 Technical Standards**

TfL design and accessibility standards as provided or directed (in the case of standards published by 3<sup>rd</sup> parties) by Customer to the Supplier from time to time.

**4. ONBOARDING**

**4.1 On-boarding**

Not Used

**5. CUSTOMER RESPONSIBILITIES**

**5.1 Customer's Responsibilities**

Not Used

**5.2 Customer's equipment**

Not Used

**6. PAYMENT**

**6.1 Payment profile and method of payment**

Charges payable by the Customer (including any applicable discount but excluding VAT), payment profile and method of payment (e.g. Government Procurement Card (GPC) or BACS

Indicate preferred payment profile by selecting one from:

6.1.1 Monthly in arrears

6.1.2 ~~Quarterly in arrears~~

See also Annex 1 – Implementation and Operations Plan

**6.2 Invoice format**

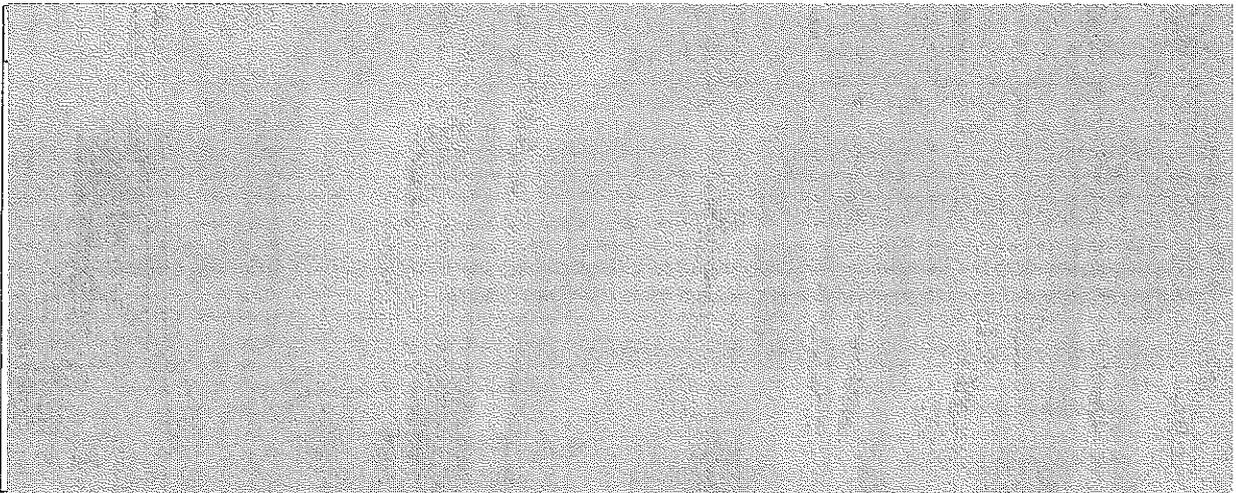
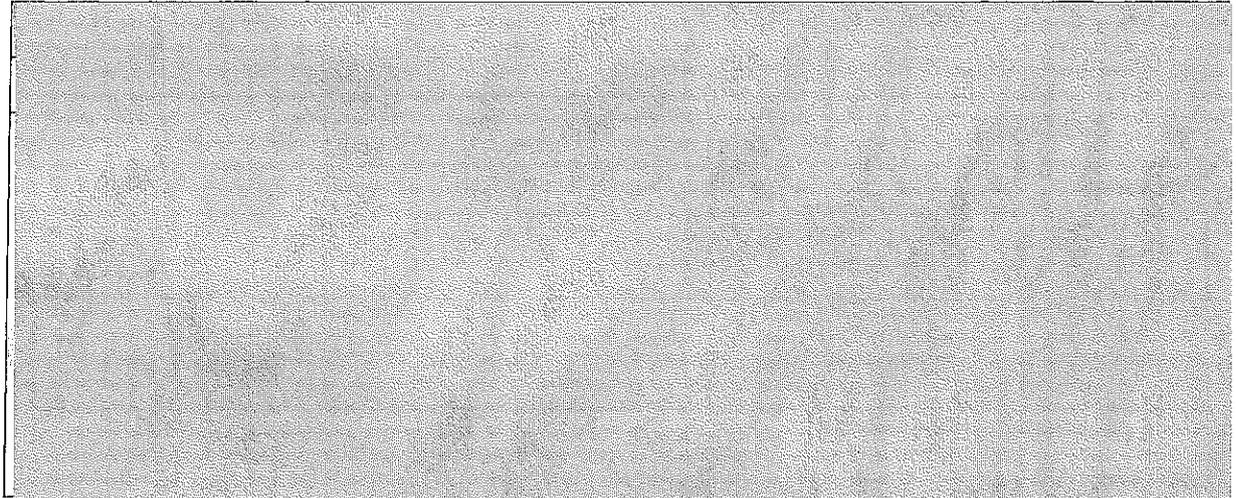
The Supplier shall issue electronic invoices Monthly in arrears. The Customer shall pay the Supplier within thirty (30) calendar days of receipt of a valid invoice, submitted in accordance with this paragraph 6.2 the payment profile set out in paragraph 6.1 above and the provisions of this Call-Off Agreement.

**7. DISPUTE RESOLUTION**

**7.1 Level of Representative to whom disputes should be escalated to:**

**7.2 Mediation Provider**

Centre for Effective Dispute Resolution.



**10. TERMINATION**

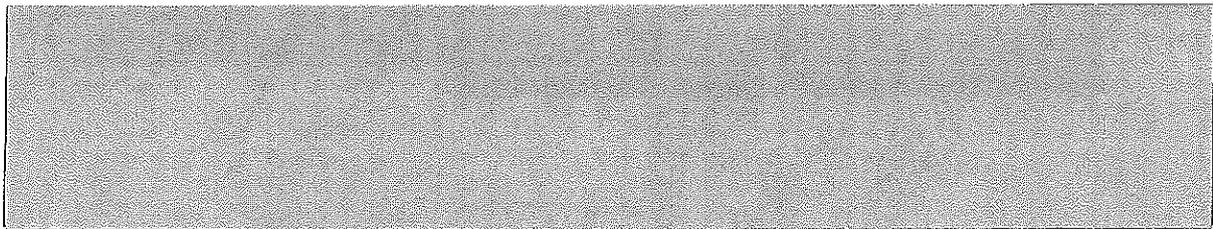
**10.1 Undisputed Sums Time Period**

At least ninety (90) Working Days of the date of the written notice specified in Clause CO 9.4 of the Call-Off Agreement.

**10.2 Termination Without Cause**

At least thirty (30) Working Days in accordance with Clause CO9.2 of the Call-Off Agreement.

**10.3 Additional Termination for Breach**



<b>11. AUDIT AND ACCESS</b>
Twelve (12) Months after the expiry of the Call-Off Agreement Period or following termination of this Call-Off Agreement.

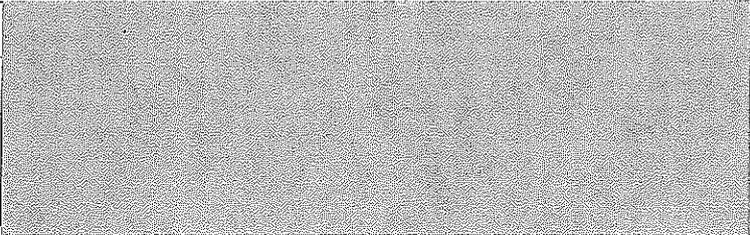
<b>12. PERFORMANCE OF THE SERVICES AND DELIVERABLES</b>				
<b>12.1 Implementation Plan and Milestones (including dates for completion)</b>				
<b>12.2 The Implementation Plan as at the Commencement Date is set out in Annex 1 to this Order Form, Annex 1 - Implementation and Operations Plan</b>				
<p>12.1.1 If so required by the Customer, the Supplier shall produce within one (1) Month of the Commencement Date a further version of the Implementation Plan (based on the above plan) in such further detail as the Customer may reasonably require. The Supplier shall ensure that each version of the Implementation Plan is subject to Customer's written approval. The Supplier shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation transition and/or transformation of the Services.</p> <p>12.1.2 The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.</p> <p>12.1.3 The Supplier shall perform its obligations so as to achieve each milestone by the milestone date.</p> <p>12.1.4 Changes to the milestones shall only be made in accordance with the Change Control Procedure and provided that the Supplier shall not attempt to postpone any of the milestones using the Change Control Procedure or otherwise (except in the event of a Customer default which affects the Supplier's ability to achieve a milestone by the relevant milestone date).]</p>				

<b>13. <del>COLLABORATION AGREEMENT</del></b>
<del>In accordance with Clause CO-21 of this Contract, the Customer [requires][does not require] the Supplier to enter into a Collaboration Agreement.</del>
<del>[The Collaboration Agreement shall be entered into on the Commencement Date.] [the Supplier shall deliver to the Customer an executed Collaboration Agreement].]</del>
<del>[Guidance Note to Customer: Consider if a Collaboration Agreement is required to ensure the</del>

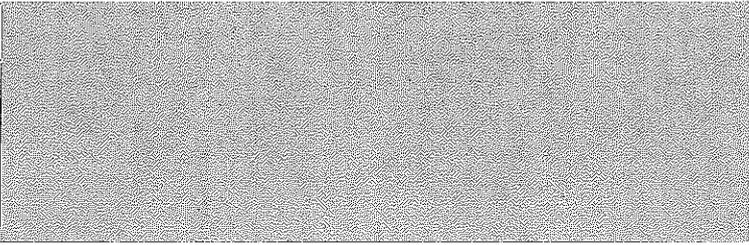
operation of the G-Cloud Services within your supply chain. Customers should consider using this where they wish to provide for the ongoing cooperation of Suppliers in the provision of services under their respective Call Off Agreement to the Customer.

**BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES** to enter a legally binding contract with the Customer to provide the G-Cloud Services. The Parties hereby acknowledge and agree that they have read the Call-Off Terms and the Order Form and by signing below agree to be bound by the terms of this Call-Off Agreement.

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

Name and Title	
Position	
Signature	
Date	

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

Name and Title	
Position	
Signature	
Date	

**G-CLOUD SERVICES CALL-OFF TERMS**

Transport for London

- and -

Mando Group Limited

relating to

the provision of G-Cloud Services.

## CALL-OFF AGREEMENT TERMS AND CONDITIONS

THIS CONTRACT is made on the 28<sup>th</sup> day of September 2015

### BETWEEN

- (1) TRANSPORT FOR LONDON of Windsor House, 42-50 Victoria Street, London, SW1H 0TL (the "Customer"); and
- (2) MANDO GROUP LIMITED a company registered in England and Wales under company number 04391789 and whose registered office is at Liverpool Science Park, 131 Mount Pleasant, Liverpool, Merseyside L3 5TF (the "Supplier").

### IT IS AGREED AS FOLLOWS:

#### CO-1 OVERRIDING PROVISIONS

- CO-1.1 The Supplier agrees to supply the G-Cloud Services and any G-Cloud Additional Services in accordance with the Call-Off Terms, including Supplier's own terms and conditions as identified in Framework Schedule 1 (G-Cloud Services) and incorporated into this Call-Off Agreement.
- CO-1.2 In the event of and only to the extent of any conflict or ambiguity between the Clauses of this Call-Off Agreement, the provisions of the Schedules, any document referred to in the Clauses of this Call-Off Agreement (including Supplier's terms and conditions) and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- CO-1.2.1 the Framework Agreement (excluding Framework Schedule 2)
  - CO-1.2.2 the Clauses of this Call-Off Agreement (excluding Supplier Terms);
  - CO-1.2.3 the completed Order Form;
  - CO-1.2.4 the Collaboration Agreement (Framework Schedule 7);
  - CO-1.2.5 the Supplier's terms and conditions as set out in the Framework Schedule 1 (G-Cloud Services); and
  - CO-1.2.6 any other document referred to in the Clauses of this Call-Off Agreement.
- CO-1.3 The Supplier acknowledges and accepts that the order of prevailing provisions as set out in Clause CO-1.2 above.

#### CO-2 PREVENTION OF BRIBERY AND CORRUPTION

- CO-2.1 If the Supplier breaches
- CO-2.1.1 Clauses FW-22.1 or FW-22.2 of the Framework Agreement; or,
  - CO-2.1.2 the Bribery Act 2010 in relation to the Framework Agreement
- the Customer may terminate this Call-Off Agreement.
- CO-2.2 The Parties agree that the Management Charge payable in accordance with Clause FW-9 does not constitute an offence under section 1 of the Bribery Act 2010.

#### CO-3 PROTECTION OF INFORMATION

- CO-3.1 The provisions of this Clause CO-3, shall apply during the Call-Off Agreement Period and for such time as the Supplier holds the Customer Personal Data.

- CO-3.2 The Supplier shall and shall procure that Supplier's Staff comply with any notification requirements under the DPA and both Parties undertake to duly observe all their obligations under the DPA which arise in connection with the Call-Off Agreement.
- CO-3.3 To the extent that the Supplier is Processing the Order Personal Data the Supplier shall:
- CO-3.3.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Order Personal Data (and to guard against unauthorised or unlawful Processing of the Order Personal Data and against accidental loss or destruction of, or damage to, the Order Personal Data; and
  - CO-3.3.2 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;
  - CO-3.3.3 promptly notify the Customer of any breach of the security measures to be put in place pursuant to this Clause; and
  - CO-3.3.4 ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of its obligations under the DPA.
- CO-3.4 To the extent that the Supplier Processes Service Personal Data the Supplier shall:
- CO-3.4.1 Process Service Personal Data only in accordance with written instructions from the Customer as set out in this Call-Off Agreement;
  - CO-3.4.2 Process the Service Personal Data only to the extent, and in such manner, as is necessary for the provision of the G-Cloud Services or as is required by Law or any Regulatory Body;
  - CO-3.4.3 implement appropriate technical and organisational measures to protect Service Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to Service Personal Data and having regard to the nature of the Service Personal Data which is to be protected;
  - CO-3.4.4 take reasonable steps to ensure the reliability of any Supplier Staff who have access to Service Personal Data;
  - CO-3.4.5 ensure that all Supplier Staff required to access Service Personal Data are informed of the confidential nature of the Service Personal Data and comply with the obligations set out in this Clause;
  - CO-3.4.6 ensure that none of the Supplier Staff publish, disclose or divulge Customer's Personal Data to any third party unless necessary for the provision of the G-Cloud Services under the Call-Off Agreement and/or directed in writing to do so by the Customer;
  - CO-3.4.7 notify the Customer within five (5) Working Days if it receives:
    - CO-3.4.7.1 a request from a Data Subject to have access to Service Personal Data relating to that person; or
    - CO-3.4.7.2 a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
  - CO-3.4.8 provide the Customer with full cooperation and assistance in relation to any complaint or request made relating to Service Personal Data, including by:
    - CO-3.4.8.1 providing the Customer with full details of the complaint or request;

CO-3.4.8.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;

CO-3.4.8.3 providing the Customer with any Service Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and

CO-3.4.8.4 providing the Customer with any information requested by the Data Subject.

CO-3.5 The Supplier shall:

CO-3.5.1 permit the Customer or the Customer's Representative (subject to the reasonable and appropriate confidentiality undertakings), to inspect and audit the Supplier's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) or provide to the Customer an independent third party inspection and audit certificate in lieu of the same (unless otherwise agreed between the Parties, the option of providing a certificate in lieu shall not be available at IL3 and above) and shall comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under this Call-Off Agreement; and/or

CO-3.5.2 subject to Clause CO-3.6 agree to an appointment of an independent auditor selected by the Supplier to undertake the activities in Clause CO-3.5.1 provided such selection is acceptable to the Customer or Customer Representative (subject to such independent auditor complying with the reasonable and appropriate confidentiality undertakings).

CO-3.6 The Supplier Shall:

CO-3.6.1 obtain prior written consent from the Customer in order to transfer Customer Personal Data to any other person (including for the avoidance of doubt any Sub-Contractors) for the provision of the G-Cloud Services;

CO-3.6.2 not cause or permit to be Processed, stored, accessed or otherwise transferred outside the EEA any Customer Personal Data supplied to it by the Customer without the prior written consent of the Customer. Where the Customer consents to such Processing, storing, accessing or transfer outside the European Economic Area the Supplier shall:

CO-3.6.2.1 comply with the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is so processed, stored, accessed or transferred;

CO-3.6.2.2 comply with any reasonable instructions notified to it by the Customer and either:

CO-3.6.2.3 incorporate standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) or warrant that the obligations set out in the Supplier Terms provide Adequate protection for Personal Data.

CO-3.7 The Supplier shall not perform its obligations under this Call-Off Agreement in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.

CO-3.8 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Personal Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).

#### CO-4 CONFIDENTIALITY

- CO-4.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Call-Off Agreement, each Party shall:
- CO-4.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - CO-4.1.2 not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Call-Off Agreement.
- CO-4.2 The Supplier may only disclose the Customer's Confidential Information to the Supplier Staff who are directly involved in the provision of the G-Cloud Services and who need to know the information, and shall ensure that such Supplier Staff are aware of and shall comply with these obligations as to confidentiality.
- CO-4.3 The Supplier shall not, and shall procure that the Supplier Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Call-Off Agreement.
- CO-4.4 The provisions of Clauses CO-4.1 shall not apply to the extent that:
- CO-4.4.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under Clause CO-7 (Transparency) and the FOIA, the Ministry of Justice Code or the Environmental Information Regulations pursuant to Clause CO-6 (Freedom of Information);
  - CO-4.4.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - CO-4.4.3 such information was obtained from a third party without obligation of confidentiality;
  - CO-4.4.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call-Off Agreement; or
  - CO-4.4.5 it is independently developed without access to the other Party's Confidential Information.
- CO-4.5 Nothing in this Call-Off Agreement shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained under Clause FW-8 (Provision of Management Information) of the Framework Agreement):
- CO-4.5.1 for the purpose of the examination and certification of the Customer's accounts;
  - CO-4.5.2 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
  - CO-4.5.3 to any Crown body or any Other Contracting Body. All Crown bodies or Contracting Bodies receiving such Supplier's Confidential Information shall be entitled to further disclose the Supplier's Confidential Information to other Crown bodies or Other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Body; or
  - CO-4.5.4 to any consultant, contractor or other person engaged by the Customer (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party) or any person conducting a Cabinet Office or ERG Gateway review or any additional assurance programme.
- CO-4.6 In the event that the Supplier fails to comply with Clauses CO-4.1 to Clause CO-4.4, the Customer reserves the right to terminate this Call-Off Agreement with immediate effect by notice in writing.

- CO-4.7 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Call-Off Agreement, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.
- CO-4.8 The Supplier will immediately notify the Customer of any breach of security in relation to Customer Confidential Information obtained in the performance of this Call-Off Agreement and will keep a record of such breaches. The Supplier will use its best endeavours to recover such Customer Confidential Information however it may be recorded. This obligation is in addition to the Supplier's obligations under Clauses CO-4.1 to Clause CO-4.4. The Supplier will co-operate with the Customer in any investigation that the Customer considers necessary to undertake as a result of any breach of security in relation to Customer Confidential Information.
- CO-4.9 Subject always to Clause CO-11.4 the Supplier shall, at all times during and after the Call-Off Agreement Period, indemnify the Customer and keep the Customer fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against the Customer arising from any breach of the Supplier's obligations under the DPA or this Clause CO-4 (Confidentiality) except and to the extent that such liabilities have resulted directly from the Customer's instructions.

#### **CO-5 CUSTOMER DATA**

- CO-5.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- CO-5.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Call-Off Agreement or as otherwise expressly approved by the Customer.
- CO-5.3 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Supplier security policy.

#### **STATUTORY OBLIGATIONS AND REGULATIONS**

##### **CO-6 FREEDOM OF INFORMATION**

- CO-6.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- CO-6.2 The Supplier shall:
- CO-6.2.1 transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
  - CO-6.2.2 provide the Customer with a copy of all Information, relating to a Request for Information, in its possession or control, in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
  - CO-6.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- CO-6.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Call-Off Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information (including Supplier's Confidential Information) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

CO-6.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.

CO-6.5 The Supplier acknowledges that the Customer may, acting in accordance with the Ministry of Justice Code, be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Supplier or the G-Cloud Services:

CO-6.5.1 in certain circumstances without consulting the Supplier; or

CO-6.5.2 following consultation with the Supplier and having taken its views into account;

provided always that where Clause CO-6.5.3 applies the Customer shall, in accordance with any recommendations of the Ministry of Justice Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

CO-6.5.3 The Supplier acknowledges that the description of information as Commercially Sensitive Information in Framework Schedule 6 (Interpretations and Definitions) is of an indicative nature only and that the Customer may be obliged to disclose it in accordance with this Clause CO-6.

#### **CO-7 TRANSPARENCY**

CO-7.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call-Off Agreement is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of this Call-Off Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

CO-7.2 Notwithstanding any other term of this Call-Off Agreement, the Supplier hereby gives its consent for the Customer to publish this Call-Off Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to this Call-Off Agreement, to the general public.

CO-7.3 The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.

CO-7.4 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Call-Off Agreement.

#### **CO-8 OFFICIAL SECRETS ACTS**

CO-8.1 The Supplier shall comply with and shall ensure that the Supplier Staff comply with, the provisions of:

CO-8.1.1 the Official Secrets Act 1911 to 1989; and

CO-8.1.2 Section 182 of the Finance Act 1989.

CO-8.2 In the event that the Supplier or the Supplier Staff fails to comply with this Clause, the Customer reserves the right to terminate this Call-Off Agreement with immediate effect by giving notice in writing to the Supplier.

#### **CO-9 TERM AND TERMINATION**

CO-9.1 This Call-Off Agreement shall take effect on the Effective Date and shall expire on:

CO-9.1.1 the date specified in paragraph 1.2 of the Order Form; or

CO-9.1.2 twenty four (24) Months after the Effective Date, whichever is the earlier, unless terminated earlier pursuant to this Clause CO-9.

CO-9.2 Termination without Cause

CO-9.2.1 The Customer shall have the right to terminate this Call-Off Agreement at any time by giving the length of written notice to the Supplier as set out in paragraph 10.2 of the Order Form.

CO-9.3 Termination on Change of Control

CO-9.3.1 The Supplier shall notify the Customer immediately if the Supplier undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("**Change of Control**") and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may terminate the Call-Off Agreement by notice in writing with immediate effect within six (6) Months of:

CO-9.3.1.1 being notified in writing that a Change of Control has occurred or is planned or in contemplation; or

CO-9.3.1.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control,

but shall not be permitted to terminate where a written approval was granted prior to the Change of Control.

CO-9.3.2 For the purposes of Clause CO-9.3.1, any transfer of shares or of any interest in shares by its affiliate company where such transfer forms part of a bona fide reorganisation or restructuring shall be disregarded.

CO-9.4 Termination by Supplier

CO-9.4.1 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay and allow the Customer five (5) calendar days to settle undisputed invoice. If the Customer fails to pay such undisputed sums within allotted additional 5 calendar days, the Supplier may terminate this Call-Off Agreement subject to giving the length of notice as specified in paragraph 10.1 of the Order Form.

CO-9.5 Termination on Insolvency

CO-9.5.1 The Customer may terminate this Call-Off Agreement with immediate effect by notice in writing where the Supplier:

CO-9.5.1.1 being an individual, or where the Supplier is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, and:

CO-9.5.1.2 shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport so to do, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986, or any similar event occurs under the law of any other jurisdiction; or

CO-9.5.1.3 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within fourteen (14) calendar days; or

CO-9.5.1.4 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

CO-9.5.1.5 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

CO-9.5.2 being a company, passes a resolution, or the Court makes an order that the Supplier or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Supplier or its Parent Company (or an application for the appointment of an administrator is made or notice to appoint an administrator is given in relation to the Supplier or its Parent Company), or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Supplier or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except where the claim is made under Section 123(1)(a) and is for an amount of less than ten thousand pounds (£10,000)) or any similar event occurs under the law of any other jurisdiction.

#### CO-9.6 Termination on Material Breach

CO-9.6.1 The Customer may terminate this Call-Off Agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a Material Breach of any obligation under this Call-Off Agreement and if:

CO-9.6.1.1 the Supplier has not remedied the Material Breach within thirty (30) Working Days (or such other longer period as may be specified by the Customer) of written notice to the Supplier specifying the Material Breach and requiring its remedy; or

CO-9.6.1.2 the Material Breach is not, in the opinion of the Customer capable of remedy.

#### CO-9.7 Termination for repeated Default

CO-9.7.1 If there are two or more Defaults (of a similar nature) that will be deemed a breach for Material Breach. Where the Customer considers that the Supplier has committed a repeated Default in relation to this Call-Off Agreement or any part thereof (including any part of the G-Cloud Services) and believes that the Default is remediable, then the Customer shall be entitled to serve a notice on the Supplier:

CO-9.7.1.1 specifying that it is a formal warning notice;

CO-9.7.1.2 giving reasonable details of the breach; and

CO-9.7.1.3 stating that such breach is a breach which, if it recurs or continues, may result in a termination of this Call-Off Agreement or that part of the G-Cloud Services affected by such breach.

CO-9.7.2 If, thirty (30) Working Days after service of a formal warning notice as described in Clause CO-9.7, the Supplier has failed to demonstrate to the satisfaction of the Customer that the breach specified has not continued or recurred and that the Supplier has put in place measures to ensure that such breach does not recur, then the Customer may deem such failure to be a Material Breach not capable of remedy for the purposes of Clause CO-9.6.1.2.

CO-9.8 The termination (howsoever arising) or expiry of this Call-Off Agreement pursuant to this Clause 9 shall be without prejudice to any rights of either the Customer or the Supplier that shall have accrued before the date of such termination or expiry.

CO-9.9 Save as aforesaid, the Supplier shall not be entitled to any payment from the Customer after the termination (howsoever arising) or expiry of this Call-Off Agreement.

#### **CO-10 CONSEQUENCES OF SUSPENSION, TERMINATION AND EXPIRY**

CO-10.1 Where a Customer has the right to terminate a Call-Off Agreement, it may elect to suspend this Call-Off Agreement and its performance.

CO-10.2 Notwithstanding the service of a notice to terminate this Call-Off Agreement or any part thereof, the Supplier shall continue to provide the Ordered G-Cloud Services until the date of expiry or termination (howsoever arising) of this Call-Off Agreement (or any part thereof) or such other date as required under this Clause CO-10.

CO-10.3 Within ten (10) Working Days of the earlier of the date of expiry or termination (howsoever arising) of this Call-Off Agreement, the Supplier shall return (or make available) to the Customer:

CO-10.3.1 any data (including (if any) Customer Data), Customer Personal Data and Customer Confidential Information in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Customer (in which event the Customer will reimburse the Supplier's pre-agreed and reasonable data conversion expenses), together with all training manuals, access keys and other related documentation, and any other information and all copies thereof owned by the Customer, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Framework Schedule FW-5, or such period as is necessary for such compliance (after which time the data must be deleted); and

CO-10.3.2 any sums prepaid in respect of Ordered G-Cloud Services not provided by the date of expiry or termination (howsoever arising) of this Call-Off Agreement.

CO-10.4 The Customer and the Supplier shall comply with the exit and service transfer arrangements as per the Supplier's terms and conditions identified in Framework Schedule 1 (G-Cloud Services).

CO-10.5 Subject to Clause CO-11 (Liability), where the Customer terminates this Call-Off Agreement under Clause CO-9.2 (Termination without Cause), the Customer shall indemnify the Supplier against any reasonable and proven commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call-Off Agreement, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Clause CO-9.2 (Termination without Cause).

#### **CO-11 LIABILITY**

CO-11.1 Nothing in this Clause CO-11 shall affect a Party's general duty to mitigate its loss.

CO-11.2 Nothing in this Call-Off Agreement shall be construed to limit or exclude either Party's liability for:

CO-11.2.1 death or personal injury caused by its negligence or that of its staff;

CO-11.2.2 bribery, Fraud or fraudulent misrepresentation by it or that of its staff;

CO-11.2.3 any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or

CO-11.2.4 any other matter which, by Law, may not be excluded or limited.

CO-11.3 Nothing in this Call-Off Agreement shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of the Call-Off Agreement or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

CO-11.4 Subject always to Clause CO-11.2, the aggregate liability of either Party under or in connection with each Year of this Call-Off Agreement (whether expressed as an indemnity or otherwise):

CO-11.4.1 for all defaults resulting in direct loss to the property (including technical infrastructure, assets, IPR or equipment but excluding any loss or damage to the Customer Personal Data or Customer Data ) of the other Party, shall be subject to the financial limits set out in paragraph 8.1 of the Order Form;

CO-11.4.2 and in respect of all other defaults, claims, losses or damages, whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall not exceed a sum equivalent to the financial limit set out in paragraph 8.3 of the Order Form .

CO-11.5 Subject always to Clause CO-11.4 the Customer shall have the right to recover as a direct loss:

CO-11.5.1 any additional operational and/or administrative expenses arising from the Supplier's Default;

CO-11.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's Default; and

CO-11.5.3 any losses, costs, damages, expenses or other liabilities suffered or incurred by the Customer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Customer Data by the Supplier.

CO-11.6 The Supplier shall not be responsible for any injury, loss, damage, cost or expense 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 Call-Off Agreement.

CO-11.7 Subject to Clauses CO-11.2 and Clause CO-11.5, in no event shall either Party be liable to the other for any:

CO-11.7.1 loss of profits;

CO-11.7.2 loss of business;

CO-11.7.3 loss of revenue;

CO-11.7.4 loss of or damage to goodwill;

CO-11.7.5 loss of savings (whether anticipated or otherwise); and/or

CO-11.7.6 any indirect, special or consequential loss or damage.

CO-11.8 The annual aggregate liability for all defaults resulting in direct loss, destruction, corruption, degradation or damage to the Customer Data or the Customer Personal Data or any copy of such Customer Data, caused by the Supplier's default under or in connection with this Call-Off Agreement shall be subject to the financial limits set out in paragraph 8.2 of the Order Form.

## **CO-12 INSURANCE**

CO-12.1 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the

Supplier, arising out of the Supplier's performance of its obligations under this Call-Off Agreement, including death or personal injury, loss of or damage to property or any other loss (including the insurance policies specified in the relevant paragraph of the Order Form). Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the Call-Off Agreement Period and for the minimum insurance period as set out in paragraph 9 of the Order Form.

CO-12.2 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Call-Off Agreement.

#### **CO-13 PAYMENT, VAT AND CALL-OFF AGREEMENT CHARGES**

CO-13.1 In consideration of the Supplier's performance of its obligations under this Call-Off Agreement, the Customer shall pay the Charges in accordance with the Clause CO-13.2 to CO-13.8.

CO-13.2 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within the time period specified in paragraph 6 of the Order Form.

CO-13.3 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the G-Cloud Services supplied and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.

CO-13.4 Where the Supplier enters into a Sub-Contract it shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due by the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-Contract.

CO-13.5 The Supplier shall add VAT to the Charges at the prevailing rate as applicable.

CO-13.6 The Supplier shall fully indemnify the Customer on demand and keep the Customer fully indemnified on a continuing basis against any liability, including without limitation against any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Call-Off Agreement. Any amounts due under this Clause CO-13 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

The Supplier shall not suspend the supply of the G-Cloud Services unless the Supplier is entitled to terminate this Call-Off Agreement under Clause CO-9.4 for Customer's failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time).

CO-13.7 In the event of a disputed invoice, the Customer shall make payment in respect of any undisputed amount in accordance with the provisions of Clause CO-13 of this Call-Off Agreement and return the invoice to the Supplier within ten (10) Working Days of receipt with a covering statement proposing amendments to the invoice and/or the reason for any non-payment. The Supplier shall respond within ten (10) Working Days of receipt of the returned invoice stating whether or not the Supplier accepts the Customer's proposed amendments. If it does then the Supplier shall supply with the response a replacement valid invoice.

CO-13.8 ~~The Supplier shall accept the Government Procurement Card as a means of payment for the G-Cloud Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.~~

#### **CO-14 GUARANTEE**

CO-14.1 Where the Customer has specified in the Order Form that this Call-Off Agreement shall be conditional upon receipt of a guarantee from the Guarantor, the Supplier shall deliver to the

Customer an executed guarantee from the Guarantor, on or prior to the Commencement Date; and deliver to the Customer a certified copy of the passed resolution and/or board minutes of the Guarantor approving the execution of the guarantee

#### **CO-15 FORCE MAJEURE**

CO-15.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Call-Off Agreement to the extent that such delay or failure is a result of Force Majeure.

CO-15.2 Notwithstanding Clause CO-15.1, each Party shall use all reasonable endeavours to continue to perform its obligations under the Call-Off Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under this Call-Off Agreement for a period in excess of one hundred and twenty (120) calendar days, either Party may terminate this Call-Off Agreement with immediate effect by notice in writing to the other Party.

#### **CO-16 TRANSFER AND SUB-CONTRACTING**

CO-16.1 The Supplier shall not assign, novate, sub-contract or in any other way dispose of this Call-Off Agreement or any part of it without the Customer's prior written approval which shall not be unreasonably withheld or delayed. Sub-Contracting any part of this Call-Off Agreement shall not relieve the Supplier of any obligation or duty attributable to the Supplier under this Call-Off Agreement.

CO-16.2 The Supplier shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

CO-16.3 The Customer may assign, novate or otherwise dispose of its rights and obligations under the Call-Off Agreement or any part thereof to:

CO-16.3.1 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or

CO-16.3.2 any private sector body which substantially performs the functions of the Customer

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Call-Off Agreement.

#### **CO-17 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

CO-17.1 A person who is not party to this Call-Off Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Call-Off Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

#### **CO-18 LAW & JURISDICTION**

CO-18.1 This Call-Off Agreement and/or any non-contractual obligations or matters arising out of or in connection with it, shall be governed by and construed in accordance with the Laws of England and Wales and without prejudice to the dispute resolution procedures set out in Clause FW-14 or CO-22 (Dispute Resolution) each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales and for all disputes to be conducted within England and Wales.

#### **CO-19 ADDITIONAL G-CLOUD SERVICES**

CO-19.1 The Customer may require the Supplier to provide the Additional G-Cloud Services. The Supplier acknowledges that the Customer is not obliged to take any Additional G-Cloud Services from the Supplier and that there is nothing preventing the Customer from receiving services that are the same as or similar to the Additional G-Cloud Services from any third party.

CO-19.2 The Supplier shall provide Additional G-Cloud Services in accordance with any relevant Implementation Plan(s) and the Supplier shall monitor the performance of such services against the Implementation Plan(s).

#### **CO-20 COLLABORATION AGREEMENT**

CO-20.1 Where the Customer has specified in paragraph 13 of the Order Form that the Customer requires the Supplier to enter into a Collaboration Agreement, ~~[the Supplier shall deliver to the Customer an executed Collaboration Agreement]~~ ~~[a Collaboration Agreement should be executed between the Parties on or prior to the Commencement Date].~~

CO-20.2 In addition to its obligations under any Collaboration Agreement, the Supplier shall:

CO-20.2.1 work pro-actively with each of the Customer's contractors in a spirit of trust and mutual confidence;

CO-20.2.2 in addition to its obligations under the Collaboration Agreement the Supplier shall cooperate with the Customer's contractors of other services to enable the efficient operation of the ICT services; and

CO-20.2.3 assist in sharing information with the Customer's contractors for the purposes of facilitating adequate provision of the G-Cloud Services and/or Additional G-Cloud Services.]

#### **CO-21 VARIATION PROCEDURE**

CO-21.1 The Customer may request in writing a variation to this Call-Off Agreement provided that such variation does not amount to a material change of the Framework Agreement and is within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".

CO-21.2 The Supplier shall notify the Customer immediately in writing of any changes proposed or in contemplation in relation to G-Cloud Services or their delivery by submitting Variation request. For the avoidance of doubt such changes would include any changes within the Supplier's supply chain.

CO-21.3 In the event that:

- (a) Either Party is unable to agree (agreement shall not be unreasonably withheld or delayed) to or provide the Variation;
- (b) the Customer may:
  - (i) agree to continue to perform its obligations under this Call-Off Agreement without the Variation; or
  - (ii) terminate this Call-Off Agreement by mutual agreement within 30 days with immediate effect.

#### **CO-22 DISPUTE RESOLUTION**

CO-22.1 The Customer and the Supplier shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this Call-Off Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Customer Representative and the Supplier Representative.

CO-22.2 If the dispute cannot be resolved by the Parties pursuant to this Clause, the Parties shall refer it to mediation unless the Customer considers that the dispute is not suitable for resolution by mediation.

CO-22.3 If the dispute cannot be resolved by mediation the Parties may refer it to arbitration.

CO-22.4 The obligations of the Parties under this Call-Off Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation or arbitration pursuant to this Clause and the

Supplier and Supplier's Staff shall continue to comply fully with the requirements of this Call-Off Agreement at all times

# Supplier Terms & Conditions

## Mando Group Ltd General Terms and Conditions for Professional Services

Copyright 2010 Mando Group Limited

### 1. Definitions and interpretation

1.1 In this Agreement, unless the context otherwise requires, the following words have the following meanings:

**"Agreement"** means the agreement between the Mando Group (1) and the Client (2) for supply of the Services formed by the signed Order incorporating these Conditions and the Proposal, the Statement of Price, the Payment Schedule and (in so far as they are appended to the Order) the Statement of Services and/or the Specification and/or the Project Plan;

**"Client"** means the party named on the Order as the purchaser of the Services;

**"Client Content"** means all text, logos, graphics, animations, screenshots, photographs, video, audio, hypertext links, or other material or creative content (on any media) originating from or supplied by the Client to Mando Group for incorporation into any deliverable pursuant to the Services as may be prescribed in the Specification;

**"Conditions"** means these terms and conditions;

**"Content"** means as the context admits, any or all of the Client Content and Mando Group Content (including the software solutions of Mando Group);

**"Delivery Date"** means the date for delivery in accordance with the Project Plan of an operational software solution as prescribed in the Order for testing by the Client;

**"Fee(s)"** means the fees payable to Mando Group for the Services as set out in the Order payable in accordance with the Payment Schedule;

**"Intellectual Property Rights"** means patents, copyrights, registered and unregistered trademarks, service marks, rights in domain names, database rights, registered designs, design rights, know-how, confidential information, trade and business names, (whether registered or not and any applications to register or rights to apply for registration of any of the foregoing) and any other similar protected rights in any country subsisting now or in the future together with, in relation to any of the foregoing rights: (i) the right to sue for past infringements; (ii) any applications for registration; and (iii) any licenses.

**"Mando Group Content"** means all computer software including standard or customised scripts and programs, all text, graphics, animation, video, audio or other material or creative content (on any media) provided by Mando Group and created for or used in the course of the providing the Services including all enhancements and corrections of them;

**"Mando Group Products"** means computer software products and games including (but not limited to), Mando Software Platform, Mando Games provided by Mando Group and created for or used in the course of the providing the Services including all enhancements and corrections of them;

**"Mando Group Third Party Software Licences"** means any third party software licensed by Mando Group including, but not limited to Microsoft Windows Server 2008 and Microsoft SQL Server 2005;

**"Milestones"** means dates identified as such in the Project Plan;

**"Order"** means the order form to which these conditions are appended signed by and on behalf of Mando Group and the Client for the delivery of the Proposal;

**"Payment Schedule"** means the schedule detailing the dates, amounts and manner of payment of the Fees to Mando Group;

**"Project Plan"** means the timetable for provision of the Client Content and the Services which if not appended to the Order is to be delivered by Mando Group to the Client in accordance with the Proposal;

**"Proposal"** means a scope of the Services to be delivered pursuant to the terms of this Agreement

**"Services"** means the services that Mando Group agrees to provide to the Client in accordance with the Order and as appropriate clause 3 of these Conditions;

**"Specification"** the specification for the Services which if not appended to the Order shall be established pursuant to the terms of the Project Plan;

**"Statement of Price"** the schedule detailing the Services and their associated costs;

1.2 In these Conditions, unless the context otherwise requires: (a) words in the singular include the plural and vice versa and words in one gender include any other gender; and (b) a reference to: (i) "Mando

Group" includes any sub-contractor or agent of Mando Group for the purposes of carrying out its obligations under the Agreement; (ii) any party includes its successors in title and permitted assigns;

1.3 In the event of any conflict or inconsistency between these conditions and (a) the Project Plan; (b) the Payment Schedule; or (c) the Specification; these terms and conditions shall prevail.

## **2. The Agreement**

2.1 The Agreement will be on these Conditions to the exclusion of all other representations, warranties, terms and conditions whether rendered prior to or subsequent to these Conditions (including without limitation any terms or conditions which the Client purports to apply).

2.2 No variation of the Agreement shall be binding unless agreed in writing between the authorised representative of Mando Group and the Client.

## **3. The Services of Mando Group**

3.1 Mando Group shall supply the Client with the Services exercising reasonable care and skill.

3.2 Mando Group shall commence delivery of the Services on the date stipulated in the Proposal and so far as it is within their control in accordance with the Project Plan.

3.3 The parties shall meet from time to time in order to review progress on the provision of the Services and to agree any minor variations to the Services. No such variations shall be valid unless signed by both parties in accordance with Condition 6.

3.4 Mando Group is under no obligation to handle technical enquiries from third parties following completion of the Services. In the event of the Client requiring hosting services, domain name registration services, maintenance or support services the Client may negotiate a separate agreement for the same with Mando Group at such rates as Mando Group may from time to time determine provided always that Mando Group shall be under no obligation whatsoever to enter into any negotiation or conclude any agreements in this respect.

3.5 In the event of the Client requiring Mando Group to upload software or databases to, or amend software or databases on, or provide maintenance and support services for the Client's own hosting services or those supplied directly to the Client by a third party; Mando Group will require the Client to negotiate a separate agreement for the same with Mando Group at such rates as Mando Group may from time to time determine provided always that Mando Group shall be under no obligation whatsoever to enter into any negotiation or conclude any agreements in this respect.

## **4. Assistance from the Client**

4.1 The Client shall deliver to Mando Group on such format as Mando Group shall request: (a) such Client Content as may be identified in the Project Plan (or as the parties may otherwise agree is to be included in the Content) at the times and dates and in the format agreed in the Project Plan or otherwise between the parties from time to time; and, in any event, (b) such Client Content as Mando Group reasonably requires in order to carry out the Services within the time scales set out in the Project Plan.

4.2 In any event, the Client shall at all times provide Mando Group with such assistance, co-operation, information and source materials as may reasonably be necessary to enable Mando Group to fulfil its obligations under the Agreement.

4.3 Mando Group may forward to the Client proof copies of all or any work undertaken on the Client's behalf. Mando Group shall incur no liability for any typographical errors not corrected by the Client in such proofs as may be submitted for the Client's approval. Any alterations or additions to the Specification (and all such Fees relating thereto) required by the Client shall be agreed in writing.

4.4 Mando Group reserves the right to refuse to incorporate content which may include pornographic or sexually immoral material, the endorsement of illegal substances, the promotion of astrology and occult practices or any content reasonably deemed by Mando Group to be unsavoury, as well as any defamatory or libellous content.

4.5 All consents and approvals or as appropriate comments and responses required from the Client by Mando Group pursuant to this Condition 4 shall be provided within the timescales required under the terms of the Project Plan.

## **5. Delivery**

5.1 Mando Group shall subject to the Client's compliance with the Agreement use all reasonable endeavours to deliver the Services in accordance with the Milestones.

5.2 If Mando Group fails to deliver any of the Services in accordance with the Milestones then (in the absence of any default on the part of the Client or in the absence of Force Majeure as described in clause 13 below) the Client shall notify Mando Group of its failure to deliver and request that Mando Group remedy such failure in accordance with Condition 11.1(b) in so far as it is a remediable breach.

5.3 The failure of the Client to provide any Client Content and/or approval, consent, comment or reply on the due date set out in the Project Plan which causes delivery of the Services to be delayed beyond the Delivery Date shall be deemed a material breach on the part of the Client.

5.4 Mando Group reserves the right to charge the Client in respect of any additional work underestimated in the Specification and/or Project Plan as a result of data or information supplied by the Client being unclear, illegible or incomplete.

5.5 The rights reserved by this Condition 5 to Mando Group shall not prejudice or be to the exclusion of the rights of suspension and/or termination pursuant to Condition 11.3.

## **6. Change Control**

6.1 At any time prior to the Delivery Date Mando Group may in writing recommend and/or the Client may in writing request from time to time changes to any part of the Specification and/or Project Plan.

Notwithstanding anything to the contrary in this Agreement, neither party shall be under any obligation to agree to any request or recommendation for a change.

6.2 Any investigation into the proposed change shall be carried out only on the Client's prior written instruction and following investigation (if any) Mando Group will give a written estimate showing the increase or decrease in the Fees and any related effect on other contractual matters including the development stages and/or key dates set out in the Project Plan should the proposed change be agreed to be implemented.

6.3 Should the Client wish to proceed with the proposed change it will instruct Mando Group in writing of its wish within fifteen (15) working days of the receipt of the written estimate (or such longer period as may be agreed). Those parts of this Agreement affected by the change will then be deemed to be modified accordingly.

6.4 Until any change is formally agreed between Mando Group and the Client, Mando Group will continue to perform and be paid for the Services as if the change had not been proposed in so far as it is able to do so, where such performance is hindered or delayed whilst an instruction is awaited on the proposed variation then the any development stages and/or key dates set out in the Project Plan shall be postponed accordingly. If the proposed change represents a significant alteration to the Specification and/or Project Plan setting out the Services then Mando Group may make a reasonable charge for implementing the proposed change.

## **7. Payment**

7.1 In consideration for performance of the Services, the Client shall pay the Fees in accordance with the Payment Schedule, at the time set out therein.

7.2 All sums payable under the Agreement are exclusive of V.A.T., if any, which shall be charged in addition at the prevailing rate.

7.3 Furthermore, the Client shall pay such reasonable out-of-pocket expenses incurred by Mando Group as are agreed in writing in advance, together with all other sums as may become due under these Conditions.

7.4 Payment of the Fees and other charges are due within thirty (30) working days of the date of the invoice for the same from Mando Group. Mando Group shall be entitled to charge interest on late payments at the rate of 2% above the base rate of Barclays Bank PLC current during that time on any amount outstanding, which is not paid in accordance with this clause.

7.5 If the Client wishes to postpone or cancel the Services and written notice is received by Mando Group not later than close of business on the third working day following the date of the Order, then no charge will be made. Otherwise the Client agrees to pay an administration charge of 5% of the Fees as identified in the Statement of Price.

7.6 If the Client cancels the commencement of the Services associated with this Agreement or postpones the Services, fees will be calculated by Mando Group according to the stage of delivery of Services in the Project Plan against the Payment Schedule using an average daily rate for the development period in which cancellation or postponement occurs always accepting that stage payments, deposits, and / or advance payments made under this contract are non-refundable and incorporate commitment to a project and not merely work undertaken.

## **8. Intellectual Property Rights**

8.1 The Intellectual Property Rights in the Client Content shall remain vested in and the property of the Client. The Client grants to Mando Group a non-exclusive, royalty-free world wide licence to use and reproduce the Client Content for the sole and exclusive purposes of (a) providing to the Client any Services or producing any work in accordance with this Agreement; (b) subject to the prior written approval of the Client, promoting Mando Group and its services to third parties.

8.2 Intellectual Property Rights in respect of the functionality of Mando Group Products, and dynamic publishing, searching and management of data in the Services or which arise out of or are acquired in the performance of this Agreement are and shall remain vested in Mando Group.

8.3 Subject to full payment of the Fees all other Intellectual Property Rights belonging to Mando Group but excluding the Mando Group Content and the Mando Group Products in the works and Services or which arise out of or are acquired in the performance this Agreement are hereby assigned (by present assignment of future rights) to the Client. Upon full payment of the Fees, Mando Group hereby assigns to the Client the copyright in the operational software so far as it doesn't comprise of the Mando Group Products and Mando Group Third Party Software Licences products which otherwise arise out of this Agreement and which is subsisting at the date of delivery.

8.4 Upon full payment of the Fees, Mando Group shall grant to the Client a non-exclusive, royalty-free perpetual licence to use and reproduce the object code version of Mando Group Content (excluding Mando Group Third Party Software Licences) strictly for the purposes of maintaining a Web Site provided under this Agreement. Mando Group will not be obliged to provide the source code of Mando Group Content, and the Client undertakes not to reverse engineer, decompile or disassemble Mando Group Content except to the extent permitted under Section 50 of the Copyright Designs and Patents Act or otherwise under law.

8.5 Mando Group shall be entitled to include a footer credit in an appropriately unobtrusive manner on a page of a Web Site containing an appropriate acknowledgement of the Intellectual Property Rights of Mando Group and of the work carried out by Mando Group, including a link to a further acknowledgements page and/or Mando Group's own web site at <http://www.mandogroup.com>

8.6 Mando Group shall be entitled to use the trading names and trade marks of the Client (in a reasonable manner) in the production of corporate brochures, press releases and similar printed or online materials solely for the purposes of promoting Mando Group and its Services to third parties. Mando Group shall supply the Client with copies of such use on request.

8.7 The parties shall at the earliest opportunity: (a) notify the other of any infringement or suspected infringement by a third party of the other's Intellectual Property Rights or misuse of their confidential information, to the extent that they become aware of such infringement or misuse; (b) notify the other of any threat or notice of proceedings claiming intellectual property infringement or breach of confidence which is received and which relates to the Services; and (c) provide the other (at the other's reasonable expense) with all reasonable assistance that may be required in order to deal with such infringement or claim.

8.8 The risk in the media upon which the work is supplied (if any) shall pass to the Client on delivery by Mando Group.

### **9. Confidentiality**

9.1 For the purposes of this Condition 9, Mando Group's "Information" as defined below includes all creative ideas originating with Mando Group which are sufficiently original, particularised, well developed and commercially valuable to constitute confidential information at law which are notified to the Client in writing, and the Client acknowledges that such ideas shall always be communicated by Mando Group in circumstances of confidentiality, expressed or otherwise.

9.2 Each party ("the Recipient") shall ensure that any confidential information ("Information") disclosed to it by the other shall not be used or disclosed save as is strictly necessary for the purposes of the Agreement and shall return to the other promptly on request any such Information provided by the other on any media.

9.3 The restrictions contained in this clause 9 shall not apply to the extent that: (a) disclosure or use of the Information is required by law; (b) evidence is available that the Information was already in the unrestricted possession of the Recipient before disclosure to it by the other party; or (c) the Information falls within the public domain other than through the default of the Recipient.

9.4 The obligation of confidentiality in this clause shall continue in force for ten (10) years following termination of the Agreement, or in the case of licences identified in Condition 8.4 ten (10) years following the Client ceasing to operate the said licenses in accordance with Condition 8.4 of these Conditions.

### **10. Liability**

10.1 Nothing in these Conditions shall exclude or restrict either party's liability for: (a) death or personal injury resulting from its negligence or that of its employees while acting in the course of their employment; (b) fraud or fraudulent misrepresentation; or (c) breach of the relevant warranties contained in Conditions 10.4 or 10.5, subject to Condition 8.7.

10.2 Subject to Condition 10.1 above, (a) neither party's liability in contract, tort or otherwise howsoever arising out of or in connection with the Agreement shall in aggregate exceed the Fees paid by the Client up to the date of the event giving rise to such liability (or in the case of a combination of events, the latest relevant event); and (b) neither party shall be liable to other party in contract, tort or otherwise howsoever

arising out of or in connection with the Agreement for any indirect loss, consequential loss, loss of profits, data, revenue, business opportunity, goodwill or reputation.

10.3 Mando Group undertakes to fix any non-compliance with the Specification within a period of 8 weeks of the Delivery Date subject to Mando Group receiving as soon as reasonably practicable after the Delivery Date written notice of the non-compliance providing sufficient detail to identify and correct any anomaly from the Client. Mando Group does not represent or warrant that the Works or the operation of the Web Site will be uninterrupted and error-free. Except where expressly stated in the Specification, Mando Group makes no representations or warranties in relation to its consistency of operation or appearance across browsers; the portability of any scripts or plug-ins contained in or referred to in the Web Site programs; or its security and the security of any data provided through or posted on it.

10.4 The Client warrants that it has the right to supply all Client Content and shall indemnify Mando Group for any losses, costs, damages, claims, expenses or demands which Mando Group may incur to the extent that: (a) any claim that the Client Content infringes the Intellectual Property Rights of any third party (including without limitation that any hypertext links required to be included in the Content by the Client infringe the copyright of any third party web site); (b) any claim that the Client Content is defamatory, obscene, blasphemous or otherwise actionable under the laws and regulations of any jurisdiction; (c) any claim that the use of the Client Content in accordance with the Specifications is in breach of any agreement between the Client and any third party or is subject to their prior approval; and (d) any claim that the Client Content is in breach of any local or national laws, regulations or codes of conduct relating (by way of example only) to standards of advertising or age rating.

10.5 Mando Group warrants that it has the right to supply Mando Group Content and shall indemnify the Client for any losses, costs, damages, claims, expenses or demands which the Client may incur as a result of: (a) any claim that Mando Group Content infringes the Intellectual Property Rights of any third party; (b) any claim that Mando Group Content is defamatory, obscene, blasphemous or otherwise actionable under the laws and regulations of any jurisdiction; (c) any claim that the use of the Mando Group Content in accordance with the Specification is in breach of any agreement between Mando Group and any third party or is subject to their prior approval; and (d) any claim that the Mando Group Content is in breach of any local or national laws, regulations or codes of conduct relating (by way of example only) to standards of advertising or age rating.

## **11. Termination and Suspension**

11.1 A party (the "Initiating Party") may terminate this Agreement with immediate effect by written notice to the other party (the "Breaching Party") on or at any time after the occurrence of: (a) an irremediable material breach by the Breaching Party of this Agreement; (b) a remediable breach by the Breaching Party of a material obligation under this Agreement where the Breaching Party fails to remedy the breach within 30 days starting on the day after receipt of written notice from the Initiating Party giving full details of the breach and requiring the Breaching Party to remedy the breach and stating that a failure to remedy the breach may give rise to termination under this Condition 11.1 or (c) more than one breach of this Agreement by the Breaching Party, the cumulative effect of such breaches being: (i) sufficient to justify the inference that the Breaching Party would continue to deliver a substandard performance in relation to a substantial portion of this Agreement over the entire remaining period of this Agreement (or, in the case of the Client, in relation to its obligations under clause 4); or (ii) serious in the widest sense of having a serious effect on the benefit which the Initiating Party would have otherwise derived in relation to a substantial portion of this Agreement.

11.2 Either party may immediately terminate this agreement if the other is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation) or compounds with or convenes a meeting of its creditors or has a receiver, administrative receiver or administrator appointed or if any circumstances arise which would entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order.

11.3 Mando Group shall have the right at any time upon notice to the Client to suspend the provision of the Services in the event that: (a) the Client has failed to deliver the Client Content in accordance with the Project Plan; or (b) the Client is in breach of its obligations under Condition 4 of these Conditions. If the Services are not completed due to delays incurred as a result of the Client or the Client's agents or subcontractors and/or associated companies' acts or omissions (including without limitation their failure to provide the Client Content in accordance with the Project Plan) then the dates and times set forth in the Project Plan and the Delivery dates shall be extended accordingly.

11.4 All reasonable costs and expenses properly incurred by Mando Group by reason of any delay variation interruption or suspension of work arising from any act or omission of the Client its employees

agents or its subcontractors will be reimbursed to Mando Group by the Client, subject to Mando Group providing written particulars of such costs and expenses.

#### **12. Consequences of Termination**

12.1 Upon termination of the Agreement all rights granted hereunder shall cease and each party shall immediately or as soon as possible deliver up to the other party all documents and materials belonging to the other and delivered to the second party or, at the request of the first party, destroy any copies which are not readily deliverable (such as copies held on the hard disk of any computer).

12.2 The termination of the Agreement for whatever cause shall not affect any provision of the Agreement which is expressed to survive or operate in the event of the termination of the Agreement and shall not prejudice or affect the rights of any party against the other in respect of any breach of the Agreement or in respect of any monies payable by either party to the other in respect of the period prior to termination.

#### **13. Force Majeure**

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

#### **14. Exclusivity, Assignment and Sub-Contracting**

Unless otherwise agreed: (a) the Services shall not be exclusive to the Client (meaning that Mando Group may provide equivalent services to any third party); (b) Mando Group shall be entitled to sub-contract any of the Services to a suitable third party; (c) neither party shall assign its rights or obligations under the Agreement without the other's consent.

#### **15. Waiver**

Failure by any party to exercise or enforce any right under the Agreement (including in the case of suspension under clause 11) shall not be deemed to be a waiver of any such right nor operate so as to prevent the exercise or enforcement of such right on any other occasion.

#### **16. Validity**

If any part, term or provision of the Agreement (not being fundamental) be held illegal or unenforceable, the validity or enforceability of the remainder of the Agreement shall not be affected.

#### **17. Third Party Rights**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement and no person other than the parties to this agreement shall have any rights under it, nor shall it be enforceable under that Act by any person other than the parties to it.

#### **18. Entire Agreement**

The Agreement and all documents defined and deemed incorporated and/or delivered pursuant to this Agreement set out the entire agreement and understanding between the parties in respect of its subject matter and the Client acknowledges that it has entered into the Agreement in reliance only upon the representations, warranties and promises expressly contained or incorporated in the Agreement and save as expressly set out therein, Mando Group shall have no liability in respect of any other representation, warranty or promise made or given prior to the date of the Agreement, howsoever made or given, unless it was made or given fraudulently.

#### **19. Law and Jurisdiction**

The Agreement and these Conditions shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

#### **20. Non-solicitation**

Both the Client and Mando Group agree that while this Agreement is in force and for a period of twelve (12) months thereafter, they shall not directly or indirectly solicit or offer employment to any of the other's staff who have been involved in or associated with this Agreement without the other's prior written consent.