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# G-Cloud 12 Call-Off Contract

This Call-Off Contract for the G-Cloud 12 Framework Agreement (RM1557.12) includes:

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## Part A: Order Form

Buyers must use this template order form as the basis for all call-off contracts and must refrain from accepting a supplier’s prepopulated version unless it has been carefully checked against template drafting.

|  |  |
| --- | --- |
| **Digital Marketplace service ID number** | 982188520222730 |
| **Call-Off Contract reference** | SR556498449 |
| **Call-Off Contract title** | Enterprise Service Bus ESB MigrationProposal |
| **Call-Off Contract description** | ESB Migration Partner - The Supplier will provide suitably experienced staff to support the Authority in the Services, the objective of which is to successfully migrate the ESB from the As-Is state to the To-Be state. Specifically, the Supplier will provide staff to lead the following functions:* Programme Management
* Technical Design
* Technical Migration
 |
| **Start date** | 01/07/2022 |
| **Expiry date** | 30/12/2023 |
| **Call-Off Contract value** | £1,300,000 ex VAT.  |
| **Charging method** | Fixed price to be agreed for subsequentphases and statement of works.Time and Materials if agreed in a statement of worksMonthly Invoices. PO transfer via SAP Ariba Network. |
| **Purchase order number** | TBC – Raised after contract is signed.  |

This Order Form is issued under the G-Cloud 12 Framework Agreement (RM1557.12). Buyers can use this Order Form to specify their G-Cloud service requirements when placing an Order.

The Order Form cannot be used to alter existing terms or add any extra terms that materially change the Deliverables offered by the Supplier and defined in the Application.

There are terms in the Call-Off Contract that may be defined in the Order Form. These are identified in the contract with square brackets.

|  |  |
| --- | --- |
| **From the Buyer** | HMRCMatthew Taylor03000 514637 Floor 1 E1.14 Trinity Bridge House 2 Dearmans PlaceSalfordM3 5BS |
| **To the Supplier** | Reply LtdAndrew Tarry(0)20 7730 600038 Grosvenor GardensLondonSW1W 0EBCompany number: 03847202 |
| **Together the ‘Parties’** |

### Principal contact details

**For the Buyer:**

Title: Senior Officer

Name: Matthew Taylor

Email: matthew.taylor5@hmrc.gov.uk

Phone: 03000 514637

**For the Supplier:**

Title: Manager

Name: Andrew Tarry

Email: a.tarry@reply.com

Phone: +44 (0)20 7730 6000/ mobile: +44 (0)7385 417139

### Call-Off Contract term

|  |  |
| --- | --- |
| **Start date** | This Call-Off Contract Starts on 01/07/2022 and is valid 30/12/2023.* A statement of works will be issued to cover the dates 01/07/2022 to 31/03/2023.
* At which point, Glue Reply will issue a new statement of work from 01/04/2023 until the end of the contract date 30/12/2023 as there will be a better understanding of the project state at that time.
* The above is subject to the total contract value not being exceeded, the works not going beyond the contract end date and that HMRC can call off the next statement of works when it is available.
 |
| **Ending (termination)** | The notice period for the Supplier needed for Ending the Call-Off Contract is at least 90 Working Days from the date of written notice for undisputed sums (as per clause 18.6).The notice period for the Buyer is a maximum of 30 days from the date of written notice for Ending without cause as per clause 18.1 |
| **Extension period** | This Call-off Contract can be extended by the Buyer by giving the Supplier 30 days written notice before its expiry. The extension periods are subject to clauses 1.3 and 1.4 in Part B below. |

### Buyer contractual details

This Order is for the G-Cloud Services outlined below. It is acknowledged by the Parties that the volume of the G-Cloud Services used by the Buyer may vary during this Call-Off Contract.

|  |  |
| --- | --- |
| **G-Cloud lot** | This Call-Off Contract is for the provision of Services under:* Lot 3: Cloud support
 |
| **G-Cloud services required** | The Services to be provided by the Supplier under the above Lot are listed in Framework Section 2 and outlined in the Statement of Work under Glue Reply Ltd Activities as referenced in Schedule 1 ‘Services’ |
| **Additional Services** | Outlined in Schedule 1. |
| **Location** | The Services will be delivered to HM Revenue and Customs. Work will, unless otherwise agreed in writing by the parties, be performed remotely due to Covid restrictions. The Supplier shall provide UK based resource.  |
| **Quality standards** | The quality standards required for this Call-Off Contract are detailed in the Statement of Work. |  |
| **Technical standards:** | The technical standards used as a requirement for this Call-Off Contract are detailed in the Statement of Work. |  |
| **Service level agreement:** | The service level and availability criteria required for this Call-Off Contract are not applicable. |  |
| **Onboarding** | The onboarding plan for this Call-Off Contract are not applicable. |  |
| **Offboarding** | Exit Plan to be proposed by the Supplier and agreed by theBuyer at least 2 months prior to the contract expiry date. |  |
| **Collaboration agreement** | In accordance with this Call-Off Contract, the Buyer does not require the Supplier to enter into a Collaboration Agreement. |  |
| **Limit on Parties’ liability** | The annual total liability of either Party for all PropertyDefaults will not exceed the charges payable by the Buyer tothe Supplier during the call-off contract term.The annual total liability for Buyer Data Defaults will not exceed125% of the Charges payable by the Buyer to the Supplierduring the Call-Off Contract Term.The annual total liability for all other Defaults will not exceed125% of the Charges payable by the Buyer to the Supplierduring the Call-Off Contract Term. |  |
| **Insurance** | The insurance(s) required will be:● a minimum insurance period of 6 years following theexpiration or Ending of this Call-Off Contract● professional indemnity insurance cover to be held bythe Supplier and by any agent, Subcontractor orconsultant involved in the supply of the G-CloudServices. This professional indemnity insurance coverwill have a minimum limit of indemnity of £1,000,000for each individual claim or any higher limit the Buyerrequires (and as required by Law)● employers' liability insurance with a minimum limit of£5,000,000 or any higher minimum limit required byLaw |  |
| **Force majeure** | A Party may End this Call-Off Contract if the Other Party isaffected by a Force Majeure Event that lasts for more than 60consecutive days. |  |
| **Audit** | The following Framework Agreement audit provisions will beincorporated under clause 2.1 of this Call-Off Contract toenable the Buyer to carry out audits on the following basis:on the following basis:* Reference to CCS shall mean the Buyer.
* Reference to Framework Agreement shall mean this

Call-Off Contract.* This Call-Off contract only.

The required audit provisions from the Framework Agreementshall include the following and incorporated into this Call-OffContract:* Clause 7.4
* Clause 7.6 - bullets 2 and 3.
* Clause 7.7 – bullets 1,2,4,5, and 6.
* Clause 7.8
* Clause 7.9
* Clause 7.10 except;
	+ bullet 2 shall be amended to read “any books
	+ of accounts kept by the Supplier solely in connection
	+ with the provision of the G-Cloud Services
	+ for the purposes of auditing the Charges
	+ and Management Charges under the Call-Off
	+ Contract only”.
	+ bullet 5 and
	+ bullet 6 (which becomes new bullet 5) shall be
	+ amended to read “any records about the Supplier’s
	+ performance of the Services and to verify
	+ that these reflect the Supplier’s own internal
	+ reports and records”
* Clause 7.11 (except the first bullet)
* Clause 7.12 which shall be amended to read “The
* Buyer can End this Call-Off Contract under section 5
* (Ending and suspension of a supplier’s appointment)
* for Material Breach if the event in clause 7.11 applies”
* Clause 7.13

For the avoidance of doubt the audit clauses (as amendedabove) appear in full as follows:* 7.4 The Supplier will maintain full and accurate records and accounts, using Good Industry Practice and generally accepted accounting principles, of the:
* operation of this Call-Off Contract entered into with the Buyer.
* Services provided under this Call-Off Contract (including any Subcontracts)
* amounts paid by the Buyer under this Call-Off Contract
* 7.6 The Supplier’s records and accounts will be kept until the latest of the following dates:
* 7 years after the date of Ending or expiry of the last Call-Off Contract to expire or End
* another date agreed between the Parties
* 7.7 During the timeframes highlighted in clause 7.6, the Supplier will maintain:
* commercial records of the Charges and costs (including
* Subcontractors’ costs) and any variations to them, including
* proposed variations
* books of accounts for this Call-Off Contract
* access to its published accounts and trading entity
* information
* proof of its compliance with its obligations under the Data
* Protection Legislation and the Transparency provisions under
* this Call-Off Contract
* records of its delivery performance under this Call-Off
* Contract, including that of its Subcontractors
* 7.8 Buyer will use reasonable endeavours to ensure that the
* Audit does not unreasonably disrupt the Supplier, but the
* Supplier accepts that control over the conduct of Audits
* carried out by the auditors is outside of Buyer’s control.
* 7.9 Subject to any Confidentiality obligations, the Supplier will
* use reasonable endeavours to:
* provide audit information without delay
* provide all audit information within scope and give auditors
* access to Supplier Staff
* 7.10 Following reasonable suspicion that Supplier has

committed fraud or over charging under this Call Off contractthe Supplier will allow the representatives of the Buyerreceiving Services under this Call-Off Contract and anysuccessors or assigns, access to the records, documents,and account information referred to in cause 7.6 (including atthe Supplier’s premises) as may be required by them andsubject to reasonable and appropriate confidentialityundertakings, to verify and review:* the accuracy of Charges (and proposed or actual variations to them under the Call-Off Contract)
* any books of accounts kept by the Supplier solely in connection with the provision of the G-Cloud Services for the purposes of auditing the Charges under the Call-Off Contract only
* the integrity, Confidentiality and security of the Buyer
* Personal Data and the Buyer Data held or used by the Supplier
* any other aspect of the delivery of the Services including to review compliance with any legislation
* any records about the Supplier’s performance of the
* Services and to verify that these reflect the Supplier’s
* own internal reports and records
* the Buyer’s assets, including the Intellectual Property
* Rights, Equipment, facilities and maintenance, to ensure
* that the Buyer’s assets are secure and that any
* asset register is up to date

7.11 The Supplier will reimburse the Buyer its reasonableAudit costs if it reveals a Material Breach.7.12 The Buyer can End this Call-Off Contract under section 5(Ending and suspension of a supplier’s appointment) forMaterial Breach if the event in clause 7.10 applies7.13 Each Party is responsible for covering all their own othercosts incurred from their compliance with these auditobligations.* Buyer acknowledges that audits or inspections of Supplier will be limited to the information and documentation relating to this Call-Off Contract and shall not include the right to audit Supplier’s physical infrastructure.
 |  |
| **Buyer’s responsibilities** | The Buyer is responsible to provide access rights, all relevant IT hardware and software to undertake the assignment HMRC will advise the Supplier within the SOW of any applicable standards, quality, or security requirements in relation to the statement of work attached in Schedule 1. |  |
| **Buyer’s equipment** | The Buyer has agreed to provide laptops (and if required, passes/access to onsite premises) to facilitate remote access |  |

### Supplier’s information

|  |  |
| --- | --- |
| **Subcontractors or partners** | The following is a list of the Supplier’s Subcontractors or Partners – not applicable. |

### Call-Off Contract charges and payment

The Call-Off Contract charges and payment details are in the table below. See Schedule 2 for a full breakdown.

|  |  |
| --- | --- |
| **Payment method** | The payment method for this Call-Off Contract is BACS. |
| **Payment profile** | The payment profile for this Call-Off Contract is monthly in arrears. |
| **Invoice details** | The Supplier will issue electronic invoices monthly in arrears.The Buyer will pay the Supplier within 30 days of receipt of a valid invoice. |
| **Who and where to send invoices to** | Invoices will be sent via SAP Ariba Network.  |
| **Invoice information required** | All invoices must include:* the Purchase Order number;
* total value excluding Value Added Tax (VAT);
* the VAT percentage;
* the total value including VAT;
* a contact name and telephone number of an
* appropriate individual in the Supplier's finance
* department in the event of administrative queries; and
* the banking details for payment to the Supplier via
* electronic transfer of funds (name and address of bank, sort code, account name and number).
 |
| **Invoice frequency** | Invoice will be sent to the Buyer monthly. |
| **Call-Off Contract value** | The total value of this Call-Off Contract is £1,300,000 ex VAT.  |
| **Call-Off Contract charges** | Charges Breakdown:● The total cost of the initial SOW (noted above under Call-Off Contract term: Start Date) is projected as £469,110.00● Project will be charge on a Time and Materials Basis.● Reply will invoice monthly in arears.● Costs to be reviewed monthly.See Schedule 1 & 2 below for further breakdown on charges and additional information on the statement of work.  |

### Additional Buyer terms

|  |  |
| --- | --- |
| **Performance of the Service and Deliverables** | As defined in the Statement of Work.  |
| **Guarantee** | Not Applicable. |
| **Warranties, representations** | Not Applicable. |
| **Supplemental requirements in addition to the Call-Off terms** | Not Applicable. |
| **Alternative clauses** | Not Applicable. |
| **Buyer specific amendments to/refinements of the Call-Off Contract terms** | As per Annex A. |
| **Public Services Network (PSN)** | For the purpose of this Call-Off Contract the Public Services Network (PSN) is not being utilised. |
| **Personal Data and Data Subjects** | Will Schedule 7 – Processing, Personal Data and Data Subjects be used NO. |

### 1. Formation of contract

1.1 By signing and returning this Order Form (Part A), the Supplier agrees to enter into a Call-Off Contract with the Buyer.

1.2 The Parties agree that they have read the Order Form (Part A) and the Call-Off Contract terms and by signing below agree to be bound by this Call-Off Contract.

1.3 This Call-Off Contract will be formed when the Buyer acknowledges receipt of the signed copy of the Order Form from the Supplier.

1.4 In cases of any ambiguity or conflict, the terms and conditions of the Call-Off Contract (Part B) and Order Form (Part A) will supersede those of the Supplier Terms and Conditions as per the order of precedence set out in clause 8.3 of the Framework Agreement.

### 2. Background to the agreement

2.1 The Supplier is a provider of G-Cloud Services and agreed to provide the Services under the terms of Framework Agreement number RM1557.12.

2.2 The Buyer provided an Order Form for Services to the Supplier.

|  |  |  |
| --- | --- | --- |
| **Signed** | Reply Ltd | HMRC |
| **Name** | Jason Hill | Dave Coburn |
| **Title** | Executive Partner | Category Lead - Physical & Cloud Infrastructure |
| **Signature** |  |  |
| **Date** |  |  |

Schedule 1: Services

This Statement of Work outlines the services to be performed and managed by the Supplier to allow the Authority to migrate its Enterprise Service Business suite of applications (“ESB”) from their current data centre infrastructure to Crown Hosting, including setup of ESB Core and Ramps (“the Services”).



**Programme Management**

1. The Supplier will take the lead on all tasks as defined in Appendix A – Migration Partner RACI for which the Migration Partner Delivery Manager is shown as either Accountable (A) or Responsible (R).
2. The Supplier co-ordinate all resources (from the Authority, Authority Third Parties and the Supplier) to create the Deliverables in a timely fashion.
3. The Supplier is Responsible and Accountable for the plan for the creation of the Deliverables (“Deliverable Plan”), in line with the Authorities broader plans for the delivery of the overarching programme.
4. The Supplier will provide daily informal, and weekly formal programme and project updates showing progress against the Deliverable Plan and RAID
5. The Supplier will provide a monthly summary of actuals vs forecast of Supplier costs for financial reporting purposes
6. The Supplier will create the following Deliverables in a timely manner, and in line with the Deliverable Plan:
	1. Project Initiation Document, including scope and project RAID, key interfaces and dependencies, team structure (covering Supplier, Authority and Authority Third Party resources)
	2. Report on customer requirements and dependencies in relation to the Services
	3. Weekly Project Update pack using HMRC Project Reporting standards and tools.

**Technical Design**

1. The Supplier will take the lead on all tasks as defined in Appendix A – Migration Partner RACI for which the Migration Partner Architecture are shown as either Accountable (A) or Responsible (R).
2. The Supplier co-ordinate all resources (from the Authority, Authority Third Parties and the Supplier) to create the Deliverables in a timely fashion.

## Schedule 2: Call-Off Contract charges

For each individual Service, the applicable Call-Off Contract Charges (in accordance with the Supplier’s Digital Marketplace pricing document) can’t be amended during the term of the Call-Off Contract. The detailed Charges breakdown for the provision of Services during the Term will include:

**Predicted Project Costs**

|  |  |  |  |
| --- | --- | --- | --- |
| **Role** | **SFIA Grade** | **Total days** | **Total cost** |
| **Architect** | **4** | **188** | **£145,700.00** |
| **Architect** | **4** | **188** | **£145,700.00** |
| **Delivery Lead** | **5** | **188** | **£168,260.00** |
| **Engagement Lead** | **6** | **910** | **£9,450.00** |

**Rate Card**

|  |  |
| --- | --- |
| **SFIA Grade** | **Day Rate** |
| **1** | **£350** |
| **2** | **£505** |
| **3** | **£695** |
| **4** | **£775** |
| **5** | **£895** |
| **6** | **£1050** |
| **7** | **£1300** |

**Dependencies**

|  |  |  |
| --- | --- | --- |
| **Ref** | **Task Name** | **Expected Completion** |
| DEP3130 | Tactical TWS (Reachback option) now confirmed as ready to use. Soft Dependency on strategic TWS Master (EC2) exists | 8/26/2022 |
| DEP3131 | ESB project requires Oracle tooling (OEM/RMAN) from Workstream 3 as backend databases are built into the integration software | 11/17/2022 |
| DEP4348 | Decommissioning Dependency - require WS7 to decommission ESB components in legacy DCs 1 month after cutover | 7/29/2022 |

* Dependencies will be tracked via the RAID log and weekly meetings

**Milestones**

|  |  |
| --- | --- |
| **Milestone** | **Expected Completion** |
| Pre-Prod Cutovers (Tranche 1) | 31/07/22 |
| Pre-Prod Cutovers (Tranche 2) | 30/09/22 |
| Prod Cutovers (Tranche 1) | 28/10/22 |
| Prod Cutovers (Tranche 2) | 31/03/23 |

* Milestones and completion dates are based on the current plan at the time of writing.

These may be amended in regular planning meetings as needed

## Part B: Terms and conditions

### 1. Call-Off Contract Start date and length

1.1 The Supplier must start providing the Services on the date specified in the Order Form.

1.2 This Call-Off Contract will expire on the Expiry Date in the Order Form. It will be for up to 24 months from the Start date unless Ended earlier under clause 18 or extended by the Buyer under clause 1.3.

1.3 The Buyer can extend this Call-Off Contract, with written notice to the Supplier, by the period in the Order Form, provided that this is within the maximum permitted under the Framework Agreement of 2 periods of up to 12 months each.

1.4 The Parties must comply with the requirements under clauses 21.3 to 21.8 if the Buyer reserves the right in the Order Form to extend the contract beyond 24 months.

### 2. Incorporation of terms

2.1 The following Framework Agreement clauses (including clauses and defined terms referenced by them) as modified under clause 2.2 are incorporated as separate Call-Off Contract obligations and apply between the Supplier and the Buyer:

* 4.1 (Warranties and representations)
* 4.2 to 4.7 (Liability)
* 4.11 to 4.12 (IR35)
* 5.4 to 5.5 (Force majeure)
* 5.8 (Continuing rights)
* 5.9 to 5.11 (Change of control)
* 5.12 (Fraud)
* 5.13 (Notice of fraud)
* 7.1 to 7.2 (Transparency)
* 8.3 (Order of precedence)
* 8.6 (Relationship)
* 8.9 to 8.11 (Entire agreement)
* 8.12 (Law and jurisdiction)
* 8.13 to 8.14 (Legislative change)
* 8.15 to 8.19 (Bribery and corruption)
* 8.20 to 8.29 (Freedom of Information Act)
* 8.30 to 8.31 (Promoting tax compliance)
* 8.32 to 8.33 (Official Secrets Act)
* 8.34 to 8.37 (Transfer and subcontracting)
* 8.40 to 8.43 (Complaints handling and resolution)
* 8.44 to 8.50 (Conflicts of interest and ethical walls)
* 8.51 to 8.53 (Publicity and branding)
* 8.54 to 8.56 (Equality and diversity)
* 8.59 to 8.60 (Data protection
* 8.64 to 8.65 (Severability)
* 8.66 to 8.69 (Managing disputes and Mediation)
* 8.80 to 8.88 (Confidentiality)
* 8.89 to 8.90 (Waiver and cumulative remedies)
* 8.91 to 8.101 (Corporate Social Responsibility)
* paragraphs 1 to 10 of the Framework Agreement glossary and interpretation
* any audit provisions from the Framework Agreement set out by the Buyer in the Order Form

2.2 The Framework Agreement provisions in clause 2.1 will be modified as follows:

2.2.1 a reference to the ‘Framework Agreement’ will be a reference to the ‘Call-Off Contract’

2.2.2 a reference to ‘CCS’ will be a reference to ‘the Buyer’

2.2.3 a reference to the ‘Parties’ and a ‘Party’ will be a reference to the Buyer and Supplier as Parties under this Call-Off Contract

2.3 The Parties acknowledge that they are required to complete the applicable Annexes contained in Schedule 4 (Processing Data) of the Framework Agreement for the purposes of this Call-Off Contract. The applicable Annexes being reproduced at Schedule 7 of this Call-Off Contract.

2.4 The Framework Agreement incorporated clauses will be referred to as incorporated Framework clause ‘XX’, where ‘XX’ is the Framework Agreement clause number.

2.5 When an Order Form is signed, the terms and conditions agreed in it will be incorporated into this Call-Off Contract.

### 3. Supply of services

3.1 The Supplier agrees to supply the G-Cloud Services and any Additional Services under the terms of the Call-Off Contract and the Supplier’s Application.

3.2 The Supplier undertakes that each G-Cloud Service will meet the Buyer’s acceptance criteria, as defined in the Order Form.

### 4. Supplier staff

4.1 The Supplier Staff must:

4.1.1 be appropriately experienced, qualified and trained to supply the Services

4.1.2 apply all due skill, care and diligence in faithfully performing those duties

4.1.3 obey all lawful instructions and reasonable directions of the Buyer and provide the Services to the reasonable satisfaction of the Buyer

4.1.4 respond to any enquiries about the Services as soon as reasonably possible

4.1.5 complete any necessary Supplier Staff vetting as specified by the Buyer

4.2 The Supplier must retain overall control of the Supplier Staff so that they are not considered to be employees, workers, agents or contractors of the Buyer.

4.3 The Supplier may substitute any Supplier Staff as long as they have the equivalent experience and qualifications to the substituted staff member.

4.4 The Buyer may conduct IR35 Assessments using the ESI tool to assess whether the Supplier’s engagement under the Call-Off Contract is Inside or Outside IR35.

4.5 The Buyer may End this Call-Off Contract for Material Breach as per clause 18.5 hereunder if the Supplier is delivering the Services Inside IR35.

4.6 The Buyer may need the Supplier to complete an Indicative Test using the ESI tool before the Start date or at any time during the provision of Services to provide a preliminary view of whether the Services are being delivered Inside or Outside IR35. If the Supplier has completed the Indicative Test, it must download and provide a copy of the PDF with the 14-digit ESI reference number from the summary outcome screen and promptly provide a copy to the Buyer.

4.7 If the Indicative Test indicates the delivery of the Services could potentially be Inside IR35, the Supplier must provide the Buyer with all relevant information needed to enable the Buyer to conduct its own IR35 Assessment.

4.8 If it is determined by the Buyer that the Supplier is Outside IR35, the Buyer will provide the ESI reference number and a copy of the PDF to the Supplier.

### 5. Due diligence

 5.1 Both Parties agree that when entering a Call-Off Contract they:

5.1.1 have made their own enquiries and are satisfied by the accuracy of any information supplied by the other Party

5.1.2 are confident that they can fulfil their obligations according to the Call-Off Contract terms

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

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

### 6. Business continuity and disaster recovery

6.1 The Supplier will have a clear business continuity and disaster recovery plan in their service descriptions.

6.2 The Supplier’s business continuity and disaster recovery services are part of the Services and will be performed by the Supplier when required.

6.3 If requested by the Buyer prior to entering into this Call-Off Contract, the Supplier must ensure that its business continuity and disaster recovery plan is consistent with the Buyer’s own plans.

### 7. Payment, VAT and Call-Off Contract charges

7.1 The Buyer must pay the Charges following clauses 7.2 to 7.11 for the Supplier’s delivery of the Services.

7.2 The Buyer will pay the Supplier within the number of days specified in the Order Form on receipt of a valid invoice.

7.3 The Call-Off Contract Charges include all Charges for payment Processing. All invoices submitted to the Buyer for the Services will be exclusive of any Management Charge.

7.4 If specified in the Order Form, the Supplier will accept payment for G-Cloud Services by the Government Procurement Card (GPC). The Supplier will be liable to pay any merchant fee levied for using the GPC and must not recover this charge from the Buyer.

7.5 The Supplier must ensure that each invoice contains a detailed breakdown of the G-Cloud Services supplied. The Buyer may request the Supplier provides further documentation to substantiate the invoice.

7.6 If the Supplier enters into a Subcontract it must ensure that a provision is included in each Subcontract which specifies that payment must be made to the Subcontractor within 30 days of receipt of a valid invoice.

7.7 All Charges payable by the Buyer to the Supplier will include VAT at the appropriate Rate.

7.8 The Supplier must add VAT to the Charges at the appropriate rate with visibility of the amount as a separate line item.

7.9 The Supplier will indemnify the Buyer on demand against any liability arising from the Supplier's failure to account for or to pay any VAT on payments made to the Supplier under this Call-Off Contract. The Supplier must pay all sums to the Buyer at least 5 Working Days before the date on which the tax or other liability is payable by the Buyer.

7.10 The Supplier must not suspend the supply of the G-Cloud Services unless the Supplier is entitled to End this Call-Off Contract under clause 18.6 for Buyer’s failure to pay undisputed sums of money. Interest will be payable by the Buyer on the late payment of any undisputed sums of money properly invoiced under the Late Payment of Commercial Debts (Interest) Act 1998.

7.11 If there’s an invoice dispute, the Buyer must pay the undisputed portion of the amount and return the invoice within 10 Working Days of the invoice date. The Buyer will provide a covering statement with proposed amendments and the reason for any non-payment. The Supplier must notify the Buyer within 10 Working Days of receipt of the returned invoice if it accepts the amendments. If it does then the Supplier must provide a replacement valid invoice with the response.

7.12 Due to the nature of G-Cloud Services it isn’t possible in a static Order Form to exactly define the consumption of services over the duration of the Call-Off Contract. The Supplier agrees that the Buyer’s volumes indicated in the Order Form are indicative only.

### 8. Recovery of sums due and right of set-off

8.1 If a Supplier owes money to the Buyer, the Buyer may deduct that sum from the Call-Off Contract Charges.

### 9. Insurance

9.1 The Supplier will maintain the insurances required by the Buyer including those in this clause.

9.2 The Supplier will ensure that:

9.2.1 during this Call-Off Contract, Subcontractors hold third party public and products liability insurance of the same amounts that the Supplier would be legally liable to pay as damages, including the claimant's costs and expenses, for accidental death or bodily injury and loss of or damage to Property, to a minimum of £1,000,000

9.2.2 the third-party public and products liability insurance contains an ‘indemnity to principals’ clause for the Buyer’s benefit

9.2.3 all agents and professional consultants involved in the Services hold professional indemnity insurance to a minimum indemnity of £1,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date

9.2.4 all agents and professional consultants involved in the Services hold employers liability insurance (except where exempt under Law) to a minimum indemnity of £5,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date

9.3 If requested by the Buyer, the Supplier will obtain additional insurance policies, or extend existing policies bought under the Framework Agreement.

9.4 If requested by the Buyer, the Supplier will provide the following to show compliance with this clause:

9.4.1 a broker's verification of insurance

9.4.2 receipts for the insurance premium

9.4.3 evidence of payment of the latest premiums due

9.5 Insurance will not relieve the Supplier of any liabilities under the Framework Agreement or this Call-Off Contract and the Supplier will:

9.5.1 take all risk control measures using Good Industry Practice, including the investigation and reports of claims to insurers

9.5.2 promptly notify the insurers in writing of any relevant material fact under any Insurances

9.5.3 hold all insurance policies and require any broker arranging the insurance to hold any insurance slips and other evidence of insurance

9.6 The Supplier will not do or omit to do anything, which would destroy or impair the legal validity of the insurance.

9.7 The Supplier will notify CCS and the Buyer as soon as possible if any insurance policies have been, or are due to be, cancelled, suspended, Ended or not renewed.

9.8 The Supplier will be liable for the payment of any:

9.8.1 premiums, which it will pay promptly

9.8.2 excess or deductibles and will not be entitled to recover this from the Buyer

### 10. Confidentiality

10.1 Subject to clause 24.1 the Supplier must during and after the Term keep the Buyer fully indemnified against all Losses, damages, costs or expenses and other liabilities (including legal fees) arising from any breach of the Supplier's obligations under the Data Protection Legislation or under incorporated Framework Agreement clauses 8.80 to 8.88. The indemnity doesn’t apply to the extent that the Supplier breach is due to a Buyer’s instruction.

### 11. Intellectual Property Rights

11.1 Unless otherwise specified in this Call-Off Contract, a Party will not acquire any right, title or interest in or to the Intellectual Property Rights (IPRs) of the other Party or its Licensors.

11.2 The Supplier grants the Buyer a non-exclusive, transferable, perpetual, irrevocable, royalty-free licence to use the Project Specific IPRs and any Background IPRs embedded within the Project Specific IPRs for the Buyer’s ordinary business activities.

11.3 The Supplier must obtain the grant of any third-party IPRs and Background IPRs so the Buyer can enjoy full use of the Project Specific IPRs, including the Buyer’s right to publish the IPR as open source.

11.4 The Supplier must promptly inform the Buyer if it can’t comply with the clause above and the Supplier must not use third-party IPRs or Background IPRs in relation to the Project Specific IPRs if it can’t obtain the grant of a licence acceptable to the Buyer.

11.5 The Supplier will, on written demand, fully indemnify the Buyer and the Crown for all Losses which it may incur at any time from any claim of infringement or alleged infringement of a third party’s IPRs because of the:

11.5.1 rights granted to the Buyer under this Call-Off Contract

11.5.2 Supplier’s performance of the Services

11.5.3 use by the Buyer of the Services

11.6 If an IPR Claim is made, or is likely to be made, the Supplier will immediately notify the Buyer in writing and must at its own expense after written approval from the Buyer, either:

11.6.1 modify the relevant part of the Services without reducing its functionality or performance

11.6.2 substitute Services of equivalent functionality and performance, to avoid the infringement or the alleged infringement, as long as there is no additional cost or burden to the Buyer

11.6.3 buy a licence to use and supply the Services which are the subject of the alleged infringement, on terms acceptable to the Buyer

11.7 Clause 11.5 will not apply if the IPR Claim is from:

11.7.2 the use of data supplied by the Buyer which the Supplier isn’t required to verify under this Call-Off Contract

11.7.3 other material provided by the Buyer necessary for the Services

11.8 If the Supplier does not comply with clauses 11.2 to 11.6, the Buyer may End this Call-Off Contract for Material Breach. The Supplier will, on demand, refund the Buyer all the money paid for the affected Services.

### 12. Protection of information

12.1 The Supplier must:

12.1.1 comply with the Buyer’s written instructions and this Call-Off Contract when Processing Buyer Personal Data

12.1.2 only Process the Buyer Personal Data as necessary for the provision of the G-Cloud Services or as required by Law or any Regulatory Body

12.1.3 take reasonable steps to ensure that any Supplier Staff who have access to Buyer Personal Data act in compliance with Supplier's security processes

12.2 The Supplier must fully assist with any complaint or request for Buyer Personal Data including by:

12.2.1 providing the Buyer with full details of the complaint or request

12.2.2 complying with a data access request within the timescales in the Data Protection Legislation and following the Buyer’s instructions

12.2.3 providing the Buyer with any Buyer Personal Data it holds about a Data Subject (within the timescales required by the Buyer)

12.2.4 providing the Buyer with any information requested by the Data Subject

12.3 The Supplier must get prior written consent from the Buyer to transfer Buyer Personal Data to any other person (including any Subcontractors) for the provision of the G-Cloud Services.

### 13. Buyer data

13.1 The Supplier must not remove any proprietary notices in the Buyer Data.

13.2 The Supplier will not store or use Buyer Data except if necessary to fulfil its

obligations.

13.3 If Buyer Data is processed by the Supplier, the Supplier will supply the data to the Buyer as requested.

13.4 The Supplier must ensure that any Supplier system that holds any Buyer Data is a secure system that complies with the Supplier’s and Buyer’s security policies and all Buyer requirements in the Order Form.

13.5 The Supplier will preserve the integrity of Buyer Data processed by the Supplier and prevent its corruption and loss.

13.6 The Supplier will ensure that any Supplier system which holds any protectively marked Buyer Data or other government data will comply with:

13.6.1 the principles in the Security Policy Framework:

<https://www.gov.uk/government/publications/security-policy-framework> and

the Government Security Classification policy: https:/www.gov.uk/government/publications/government-security-classifications

13.6.2 guidance issued by the Centre for Protection of National Infrastructure on

Risk Management:

<https://www.cpni.gov.uk/content/adopt-risk-management-approach> and

Protection of Sensitive Information and Assets:

<https://www.cpni.gov.uk/protection-sensitive-information-and-assets>

13.6.3 the National Cyber Security Centre’s (NCSC) information risk management guidance:

<https://www.ncsc.gov.uk/collection/risk-management-collection>

13.6.4 government best practice in the design and implementation of system components, including network principles, security design principles for digital services and the secure email blueprint:

<https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>

13.6.5 the security requirements of cloud services using the NCSC Cloud Security Principles and accompanying guidance:

<https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles>

13.6.6 buyer requirements in respect of AI ethical standards

13.7 The Buyer will specify any security requirements for this project in the Order Form.

13.8 If the Supplier suspects that the Buyer Data has or may become corrupted, lost, breached or significantly degraded in any way for any reason, then the Supplier will notify the Buyer immediately and will (at its own cost if corruption, loss, breach or degradation of the Buyer Data was caused by the action or omission of the Supplier) comply with any remedial action reasonably proposed by the Buyer.

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

13.10 The provisions of this clause 13 will apply during the term of this Call-Off Contract and for as long as the Supplier holds the Buyer’s Data.

### 14. Standards and quality

14.1 The Supplier will comply with any standards in this Call-Off Contract, the Order Form and the Framework Agreement.

14.2 The Supplier will deliver the Services in a way that enables the Buyer to comply with its obligations under the Technology Code of Practice, which is at:

<https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>

14.3 If requested by the Buyer, the Supplier must, at its own cost, ensure that the G-Cloud Services comply with the requirements in the PSN Code of Practice.

14.4 If any PSN Services are Subcontracted by the Supplier, the Supplier must ensure that the services have the relevant PSN compliance certification.

14.5 The Supplier must immediately disconnect its G-Cloud Services from the PSN if the PSN Authority considers there is a risk to the PSN’s security and the Supplier agrees that the Buyer and the PSN Authority will not be liable for any actions, damages, costs, and any other Supplier liabilities which may arise.

### 15. Open source

15.1 All software created for the Buyer must be suitable for publication as open source, unless otherwise agreed by the Buyer.

15.2 If software needs to be converted before publication as open source, the Supplier must also provide the converted format unless otherwise agreed by the Buyer.

### 16. Security

16.1 If requested to do so by the Buyer, before entering into this Call-Off Contract the Supplier will, within 15 Working Days of the date of this Call-Off Contract, develop (and obtain the Buyer’s written approval of) a Security Management Plan and an Information Security Management System. After Buyer approval the Security Management Plan and Information Security Management System will apply during the Term of this Call-Off Contract. Both plans will comply with the Buyer’s security policy and protect all aspects and processes associated with the delivery of the Services.

16.2 The Supplier will use all reasonable endeavours, software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software.

16.3 If Malicious Software causes loss of operational efficiency or loss or corruption of Service Data, the Supplier will help the Buyer to mitigate any losses and restore the Services to operating efficiency as soon as possible.

16.4 Responsibility for costs will be at the:

16.4.1 Supplier’s expense if the Malicious Software originates from the Supplier software or the Service Data while the Service Data was under the control of the Supplier, unless the Supplier can demonstrate that it was already present, not quarantined or identified by the Buyer when provided

16.4.2 Buyer’s expense if the Malicious Software originates from the Buyer software or the Service Data, while the Service Data was under the Buyer’s control

16.5 The Supplier will immediately notify the Buyer of any breach of security of Buyer’s Confidential Information (and the Buyer of any Buyer Confidential Information breach). Where the breach occurred because of a Supplier Default, the Supplier will recover the Buyer’s Confidential Information however it may be recorded.

16.6 Any system development by the Supplier should also comply with the government’s ‘10 Steps to Cyber Security’ guidance:

<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>

16.7 If a Buyer has requested in the Order Form that the Supplier has a Cyber Essentials certificate, the Supplier must provide the Buyer with a valid Cyber Essentials certificate (or equivalent) required for the Services before the Start date.

### 17. Guarantee

17.1 If this Call-Off Contract is conditional on receipt of a Guarantee that is acceptable to the Buyer, the Supplier must give the Buyer on or before the Start date:

17.1.1 an executed Guarantee in the form at Schedule 5

17.1.2 a certified copy of the passed resolution or board minutes of the guarantor approving the execution of the Guarantee

### 18. Ending the Call-Off Contract

18.1 The Buyer can End this Call-Off Contract at any time by giving 30 days’ written notice to the Supplier, unless a shorter period is specified in the Order Form. The Supplier’s obligation to provide the Services will end on the date in the notice.

18.2 The Parties agree that the:

18.2.1 Buyer’s right to End the Call-Off Contract under clause 18.1 is reasonable considering the type of cloud Service being provided

18.2.2 Call-Off Contract Charges paid during the notice period is reasonable compensation and covers all the Supplier’s avoidable costs or Losses

18.3 Subject to clause 24 (Liability), if the Buyer Ends this Call-Off Contract under clause 18.1, it will indemnify the Supplier against any commitments, liabilities or expenditure which result in any unavoidable Loss by the Supplier, provided that the Supplier takes all reasonable steps to mitigate the Loss. If the Supplier has insurance, the Supplier will reduce its unavoidable costs by any insurance sums available. The Supplier will submit a fully itemised and costed list of the unavoidable Loss with supporting evidence.

18.4 The Buyer will have the right to End this Call-Off Contract at any time with immediate effect by written notice to the Supplier if either the Supplier commits:

18.4.1 a Supplier Default and if the Supplier Default cannot, in the reasonable opinion of the Buyer, be remedied

18.4.2 any fraud

18.5 A Party can End this Call-Off Contract at any time with immediate effect by written notice if:

18.5.1 the other Party commits a Material Breach of any term of this Call-Off Contract (other than failure to pay any amounts due) and, if that breach is remediable, fails to remedy it within 15 Working Days of being notified in writing to do so

18.5.2 an Insolvency Event of the other Party happens

18.5.3 the other Party ceases or threatens to cease to carry on the whole or any material part of its business

18.6 If the Buyer fails to pay the Supplier undisputed sums of money when due, the Supplier must notify the Buyer and allow the Buyer 5 Working Days to pay. If the Buyer doesn’t pay within 5 Working Days, the Supplier may End this Call-Off Contract by giving the length of notice in the Order Form.

18.7 A Party who isn’t relying on a Force Majeure event will have the right to End this Call-Off Contract if clause 23.1 applies.

### 19. Consequences of suspension, ending and expiry

19.1 If a Buyer has the right to End a Call-Off Contract, it may elect to suspend this Call-Off Contract or any part of it.

19.2 Even if a notice has been served to End this Call-Off Contract or any part of it, the Supplier must continue to provide the Ordered G-Cloud Services until the dates set out in the notice.

19.3 The rights and obligations of the Parties will cease on the Expiry Date or End Date whichever applies) of this Call-Off Contract, except those continuing provisions described in clause 19.4.

19.4 Ending or expiry of this Call-Off Contract will not affect:

19.4.1 any rights, remedies or obligations accrued before its Ending or expiration

19.4.2 the right of either Party to recover any amount outstanding at the time of Ending or expiry

19.4.3 the continuing rights, remedies or obligations of the Buyer or the Supplier under clauses

* + 7 (Payment, VAT and Call-Off Contract charges)
	+ 8 (Recovery of sums due and right of set-off)
	+ 9 (Insurance)
	+ 10 (Confidentiality)
	+ 11 (Intellectual property rights)
	+ 12 (Protection of information)
	+ 13 (Buyer data)
	+ 19 (Consequences of suspension, ending and expiry)
	+ 24 (Liability); incorporated Framework Agreement clauses: 4.2 to 4.7 (Liability)
	+ 8.44 to 8.50 (Conflicts of interest and ethical walls)
	+ 8.89 to 8.90 (Waiver and cumulative remedies)

19.4.4 any other provision of the Framework Agreement or this Call-Off Contract which expressly or by implication is in force even if it Ends or expires

19.5 At the end of the Call-Off Contract Term, the Supplier must promptly:

19.5.1 return all Buyer Data including all copies of Buyer software, code and any other software licensed by the Buyer to the Supplier under it

19.5.2 return any materials created by the Supplier under this Call-Off Contract if the IPRs are owned by the Buyer

19.5.3 stop using the Buyer Data and, at the direction of the Buyer, provide the Buyer with a complete and uncorrupted version in electronic form in the formats and on media agreed with the Buyer

19.5.4 destroy all copies of the Buyer Data when they receive the Buyer’s written instructions to do so or 12 calendar months after the End or Expiry Date, and provide written confirmation to the Buyer that the data has been securely destroyed, except if the retention of Buyer Data is required by Law

19.5.5 work with the Buyer on any ongoing work

19.5.6 return any sums prepaid for Services which have not been delivered to the Buyer, within 10 Working Days of the End or Expiry Date

19.6 Each Party will return all of the other Party’s Confidential Information and confirm this has been done, unless there is a legal requirement to keep it or this Call-Off Contract states otherwise.

19.7 All licences, leases and authorisations granted by the Buyer to the Supplier will cease at the end of the Call-Off Contract Term without the need for the Buyer to serve notice except if this Call-Off Contract states otherwise.

### 20. Notices

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

* Manner of delivery: email
* Deemed time of delivery: 9am on the first Working Day after sending
* Proof of service: Sent in an emailed letter in PDF format to the correct email address without any error message

20.2 This clause does not apply to any legal action or other method of dispute resolution which should be sent to the addresses in the Order Form (other than a dispute notice under this Call-Off Contract).

### 21. Exit plan

21.1 The Supplier must provide an exit plan in its Application which ensures continuity of service and the Supplier will follow it.

21.2 When requested, the Supplier will help the Buyer to migrate the Services to a replacement supplier in line with the exit plan. This will be at the Supplier’s own expense if the Call-Off Contract Ended before the Expiry Date due to Supplier cause.

21.3 If the Buyer has reserved the right in the Order Form to extend the Call-Off Contract Term beyond 24 months the Supplier must provide the Buyer with an additional exit plan for approval by the Buyer at least 8 weeks before the 18 month anniversary of the Start date.

21.4 The Supplier must ensure that the additional exit plan clearly sets out the Supplier’s methodology for achieving an orderly transition of the Services from the Supplier to the Buyer or its replacement Supplier at the expiry of the proposed extension period or if the contract Ends during that period.

21.5 Before submitting the additional exit plan to the Buyer for approval, the Supplier will work with the Buyer to ensure that the additional exit plan is aligned with the Buyer’s own exit plan and strategy.

21.6 The Supplier acknowledges that the Buyer’s right to extend the Term beyond 24 months is subject to the Buyer’s own governance process. Where the Buyer is a central government department, this includes the need to obtain approval from GDS under the Spend Controls process. The approval to extend will only be given if the Buyer can clearly demonstrate that the Supplier’s additional exit plan ensures that:

21.6.1 the Buyer will be able to transfer the Services to a replacement supplier before the expiry or Ending of the extension period on terms that are commercially reasonable and acceptable to the Buyer

21.6.2 there will be no adverse impact on service continuity

21.6.3 there is no vendor lock-in to the Supplier’s Service at exit

21.6.4 it enables the Buyer to meet its obligations under the Technology Code Of Practice

21.7 If approval is obtained by the Buyer to extend the Term, then the Supplier will comply with its obligations in the additional exit plan.

21.8 The additional exit plan must set out full details of timescales, activities and roles and responsibilities of the Parties for:

21.8.1 the transfer to the Buyer of any technical information, instructions, manuals and code reasonably required by the Buyer to enable a smooth migration from the Supplier

21.8.2 the strategy for exportation and migration of Buyer Data from the Supplier system to the Buyer or a replacement supplier, including conversion to open standards or other standards required by the Buyer

21.8.3 the transfer of Project Specific IPR items and other Buyer customisations, configurations and databases to the Buyer or a replacement supplier

21.8.4 the testing and assurance strategy for exported Buyer Data

21.8.5 if relevant, TUPE-related activity to comply with the TUPE regulations

21.8.6 any other activities and information which is reasonably required to ensure continuity of Service during the exit period and an orderly transition

### 22. Handover to replacement supplier

22.1 At least 10 Working Days before the Expiry Date or End Date, the Supplier must provide any:

22.1.1 data (including Buyer Data), Buyer Personal Data and Buyer Confidential Information in the Supplier’s possession, power or control

22.1.2 other information reasonably requested by the Buyer

22.2 On reasonable notice at any point during the Term, the Supplier will provide any information and data about the G-Cloud Services reasonably requested by the Buyer (including information on volumes, usage, technical aspects, service performance and staffing). This will help the Buyer understand how the Services have been provided and to run a fair competition for a new supplier.

22.3 This information must be accurate and complete in all material respects and the level of detail must be sufficient to reasonably enable a third party to prepare an informed offer for replacement services and not be unfairly disadvantaged compared to the Supplier in the buying process.

### 23. Force majeure

23.1 If a Force Majeure event prevents a Party from performing its obligations under this Call-Off Contract for more than the number of consecutive days set out in the Order Form, the other Party may End this Call-Off Contract with immediate effect by written notice.

### 24. Liability

24.1 Subject to incorporated Framework Agreement clauses 4.2 to 4.7, each Party's Yearly total liability for Defaults under or in connection with this Call-Off Contract (whether expressed as an indemnity or otherwise) will be set as follows:

24.1.1 Property: for all Defaults by either party resulting in direct loss to the property (including technical infrastructure, assets, IPR or equipment but excluding any loss or damage to Buyer Data) of the other Party, will not exceed the amount in the Order Form

24.1.2 Buyer Data: for all Defaults by the Supplier resulting in direct loss, destruction, corruption, degradation or damage to any Buyer Data, will not exceed the amount in the Order Form

24.1.3 Other Defaults: for all other Defaults by either party, claims, Losses or damages, whether arising from breach of contract, misrepresentation (whether under common law or statute), tort (including negligence), breach of statutory duty or otherwise will not exceed the amount in the Order Form.

### 25. Premises

25.1 If either Party uses the other Party’s premises, that Party is liable for all loss or damage it causes to the premises. It is responsible for repairing any damage to the premises or any objects on the premises, other than fair wear and tear.

25.2 The Supplier will use the Buyer’s premises solely for the performance of its obligations under this Call-Off Contract.

25.3 The Supplier will vacate the Buyer’s premises when the Call-Off Contract Ends or expires.

25.4 This clause does not create a tenancy or exclusive right of occupation.

25.5 While on the Buyer’s premises, the Supplier will:

25.5.1 comply with any security requirements at the premises and not do anything to weaken the security of the premises

25.5.2 comply with Buyer requirements for the conduct of personnel

25.5.3 comply with any health and safety measures implemented by the Buyer

25.5.4 immediately notify the Buyer of any incident on the premises that causes any damage to Property which could cause personal injury

25.6 The Supplier will ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Buyer on request.

### 26. Equipment

26.1 The Supplier is responsible for providing any Equipment which the Supplier requires to provide the Services.

26.2 Any Equipment brought onto the premises will be at the Supplier's own risk and the Buyer will have no liability for any loss of, or damage to, any Equipment.

26.3 When the Call-Off Contract Ends or expires, the Supplier will remove the Equipment and any other materials leaving the premises in a safe and clean condition.

### 27. The Contracts (Rights of Third Parties) Act 1999

27.1 Except as specified in clause 29.8, a person who isn’t Party to this Call-Off Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms. This does not affect any right or remedy of any person which exists or is available otherwise.

### 28. Environmental requirements

28.1 The Buyer will provide a copy of its environmental policy to the Supplier on request, which the Supplier will comply with.

28.2 The Supplier must provide reasonable support to enable Buyers to work in an environmentally friendly way, for example by helping them recycle or lower their carbon footprint.

### 29. The Employment Regulations (TUPE)

29.1 The Supplier agrees that if the Employment Regulations apply to this Call-Off Contract on the Start date then it must comply with its obligations under the Employment Regulations and (if applicable) New Fair Deal (including entering into an Admission Agreement) and will indemnify the Buyer or any Former Supplier for any loss arising from any failure to comply.

29.2 Twelve months before this Call-Off Contract expires, or after the Buyer has given notice to End it, and within 28 days of the Buyer’s request, the Supplier will fully and accurately disclose to the Buyer all staff information including, but not limited to, the total number of staff assigned for the purposes of TUPE to the Services. For each person identified the Supplier must provide details of:

29.2.1 the activities they perform

29.2.2 age

29.2.3 start date

29.2.4 place of work

29.2.5 notice period

29.2.6 redundancy payment entitlement

29.2.7 salary, benefits and pension entitlements

29.2.8 employment status

29.2.9 identity of employer

29.2.10 working arrangements

29.2.11 outstanding liabilities

29.2.12 sickness absence

29.2.13 copies of all relevant employment contracts and related documents

29.2.14 all information required under regulation 11 of TUPE or as reasonably

requested by the Buyer

29.3 The Supplier warrants the accuracy of the information provided under this TUPE clause and will notify the Buyer of any changes to the amended information as soon as reasonably possible. The Supplier will permit the Buyer to use and disclose the information to any prospective Replacement Supplier.

29.4 In the 12 months before the expiry of this Call-Off Contract, the Supplier will not change the identity and number of staff assigned to the Services (unless reasonably requested by the Buyer) or their terms and conditions, other than in the ordinary course of business.

29.5 The Supplier will co-operate with the re-tendering of this Call-Off Contract by allowing the Replacement Supplier to communicate with and meet the affected employees or their representatives.

29.6 The Supplier will indemnify the Buyer or any Replacement Supplier for all Loss arising from both:

29.6.1 its failure to comply with the provisions of this clause

29.6.2 any claim by any employee or person claiming to be an employee (or their employee representative) of the Supplier which arises or is alleged to arise from any act or omission by the Supplier on or before the date of the Relevant Transfer

29.7 The provisions of this clause apply during the Term of this Call-Off Contract and indefinitely after it Ends or expires.

29.8 For these TUPE clauses, the relevant third party will be able to enforce its rights under this clause but their consent will not be required to vary these clauses as the Buyer and Supplier may agree.

### 30. Additional G-Cloud services

30.1 The Buyer may require the Supplier to provide Additional Services. The Buyer doesn’t have to buy any Additional Services from the Supplier and can buy services that are the same as or similar to the Additional Services from any third party.

30.2 If reasonably requested to do so by the Buyer in the Order Form, the Supplier must provide and monitor performance of the Additional Services using an Implementation Plan.

### 31. **Collaboration – Not Used**

### 32. Variation process

32.1 The Buyer can request in writing a change to this Call-Off Contract if it isn’t a material change to the Framework Agreement/or this Call-Off Contract. Once implemented, it is called a Variation.

32.2 The Supplier must notify the Buyer immediately in writing of any proposed changes to their G-Cloud Services or their delivery by submitting a Variation request. This includes any changes in the Supplier’s supply chain.

32.3 If Either Party can’t agree to or provide the Variation, the Buyer may agree to continue performing its obligations under this Call-Off Contract without the Variation, or End this Call-Off Contract by giving 30 days notice to the Supplier.

### 33. Data Protection Legislation (GDPR)

33.1 Pursuant to clause 2.1 and for the avoidance of doubt, clauses 8.59 and 8.60 of the Framework Agreement are incorporated into this Call-Off Contract. For reference, the appropriate GDPR templates which are required to be completed in accordance with clauses 8.59 and 8.60 are reproduced in this Call-Off Contract document at schedule 7.

## **Schedule 3: Collaboration agreement – (Not Applicable)**

## Schedule 6: Glossary and interpretations

In this Call-Off Contract the following expressions mean:

|  |  |
| --- | --- |
| Expression | Meaning |
| **Additional Services** | Any services ancillary to the G-Cloud Services that are in the scope of Framework Agreement Section 2 (Services Offered) which a Buyer may request. |
| **Admission Agreement** | The agreement to be entered into to enable the Supplier to participate in the relevant Civil Service pension scheme(s). |
| **Application** | The response submitted by the Supplier to the Invitation to Tender (known as the Invitation to Apply on the Digital Marketplace). |
| **Audit** | An audit carried out under the incorporated Framework Agreement clauses specified by the Buyer in the Order (if any). |
| **Background IPRs** | For each Party, IPRs:* owned by that Party before the date of this Call-Off Contract (as may be enhanced and/or modified but not as a consequence of the Services) including IPRs contained in any of the Party's Know-How, documentation and processes
* created by the Party independently of this Call-Off Contract, or

For the Buyer, Crown Copyright which isn’t available to the Supplier otherwise than under this Call-Off Contract, but excluding IPRs owned by that Party in Buyer software or Supplier software. |
| **Buyer** | The contracting authority ordering services as set out in the Order Form. |
| **Buyer Data** | All data supplied by the Buyer to the Supplier including Personal Data and Service Data that is owned and managed by the Buyer. |
| **Buyer Personal Data** | The Personal Data supplied by the Buyer to the Supplier for purposes of, or in connection with, this Call-Off Contract. |
| **Buyer Representative** | The representative appointed by the Buyer under this Call-Off Contract. |
| **Buyer Software** | Software owned by or licensed to the Buyer (other than under this Agreement), which is or will be used by the Supplier to provide the Services. |
| **Call-Off Contract** | This call-off contract entered into following the provisions of the Framework Agreement for the provision of Services made between the Buyer and the Supplier comprising the Order Form, the Call-Off terms and conditions, the Call-Off schedules and the Collaboration Agreement. |
| **Charges** | The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under this Call-Off Contract. |
| **Collaboration Agreement** | An agreement, substantially in the form set out at Schedule 3, between the Buyer and any combination of the Supplier and contractors, to ensure collaborative working in their delivery of the Buyer’s Services and to ensure that the Buyer receives end-to-end services across its IT estate. |
| **Commercially Sensitive Information** | Information, which the Buyer has been notified about by the Supplier in writing before the Start date with full details of why the Information is deemed to be commercially sensitive. |
| **Confidential Information** | Data, Personal Data and any information, which may include (but isn’t limited to) any:* information about business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above
* other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential').
 |
| **Control** | ‘Control’ as defined in section 1124 and 450 of the Corporation TaxAct 2010. 'Controls' and 'Controlled' will be interpreted accordingly. |
| **Controller** | Takes the meaning given in the GDPR. |
| **Crown** | The government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies carrying out functions on its behalf. |
| **Data Loss Event** | Event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Framework Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach. |
| **Data Protection Impact Assessment (DPIA)** | An assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data. |
| **Data Protection Legislation (DPL)** | Data Protection Legislation means:(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time(ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy(iii) all applicable Law about the Processing of Personal Data and privacy including if applicable legally binding guidance and codes of practice issued by the Information Commissioner |
| **Data Subject** | Takes the meaning given in the GDPR |
| **Default** | Default is any:* breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term)
* other Default, negligence or negligent statement of the Supplier, of its Subcontractors or any Supplier Staff (whether by act or omission), in connection with or in relation to this Call-Off Contract

Unless otherwise specified in the Framework Agreement the Supplier is liable to CCS for a Default of the Framework Agreement and in relation to a Default of the Call-Off Contract, the Supplier is liable to the Buyer. |
| **Deliverable(s)** | The G-Cloud Services the Buyer contracts the Supplier to provide under this Call-Off Contract. |
| **Digital Marketplace** | The government marketplace where Services are available for Buyers to buy. ([https://www.digitalmarketplace.service.gov.uk](https://www.digitalmarketplace.service.gov.uk/)/) |
| **DPA 2018** | Data Protection Act 2018. |
| **Employment Regulations** | The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (‘TUPE’) which implements the Acquired Rights Directive. |
| **End** | Means to terminate; and Ended and Ending are construed accordingly. |
| **Environmental Information Regulations or EIR** | The Environmental Information Regulations 2004 together with any guidance or codes of practice issued by the Information Commissioner or relevant government department about the regulations. |
| **Equipment** | The Supplier’s hardware, computer and telecoms devices, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from CCS or the Buyer) in the performance of its obligations under this Call-Off Contract. |
| **ESI Reference Number** | The 14 digit ESI reference number from the summary of the outcome screen of the ESI tool. |
| **Employment Status Indicator test tool or ESI tool** | The HMRC Employment Status Indicator test tool. The most up-to-date version must be used. At the time of drafting the tool may be found here:<https://www.gov.uk/guidance/check-employment-status-for-tax> |
| **Expiry Date** | The expiry date of this Call-Off Contract in the Order Form. |
| **Force Majeure** | A force Majeure event means anything affecting either Party's performance of their obligations arising from any:* acts, events or omissions beyond the reasonable control of the affected Party
* riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare
* acts of government, local government or Regulatory Bodies
* fire, flood or disaster and any failure or shortage of power or fuel
* industrial dispute affecting a third party for which a substitute third party isn’t reasonably available

The following do not constitute a Force Majeure event:* any industrial dispute about the Supplier, its staff, or failure in the Supplier’s (or a Subcontractor's) supply chain
* any event which is attributable to the wilful act, neglect or failure to take reasonable precautions by the Party seeking to rely on Force Majeure
* the event was foreseeable by the Party seeking to rely on Force Majeure at the time this Call-Off Contract was entered into
* any event which is attributable to the Party seeking to rely on Force Majeure and its failure to comply with its own business continuity and disaster recovery plans
 |
| **Former Supplier** | A supplier supplying services to the Buyer before the Start date that are the same as or substantially similar to the Services. This also includes any Subcontractor or the Supplier (or any subcontractor of the Subcontractor). |
| **Framework Agreement** | The clauses of framework agreement RM1557.12 together with the Framework Schedules. |
| **Fraud** | Any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Crown. |
| **Freedom of Information Act or FoIA** | The Freedom of Information Act 2000 and any subordinate legislation made under the Act together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to the legislation. |
| **G-Cloud Services** | The cloud services described in Framework Agreement Section 2 (Services Offered) as defined by the Service Definition, the Supplier Terms and any related Application documentation, which the Supplier must make available to CCS and Buyers and those services which are deliverable by the Supplier under the Collaboration Agreement. |
| **GDPR** | General Data Protection Regulation (Regulation (EU) 2016/679) |
| **Good Industry Practice** | Standards, practices, methods and process conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar undertaking in the same or similar circumstances. |
| **Government Procurement Card** | The government’s preferred method of purchasing and payment for low value goods or services. |
| **Guarantee** | The guarantee described in Schedule 5. |
| **Guidance** | Any current UK government guidance on the Public Contracts Regulations 2015. In the event of a conflict between any current UK government guidance and the Crown Commercial Service guidance, current UK government guidance will take precedence. |
| **Implementation Plan** | The plan with an outline of processes (including data standards for migration), costs (for example) of implementing the services which may be required as part of Onboarding. |
| **Indicative test** | ESI tool completed by contractors on their own behalf at the request of CCS or the Buyer (as applicable) under clause 4.6. |
| **Information** | Has the meaning given under section 84 of the Freedom of Information Act 2000. |
| **Information security management system** | The information security management system and process developed by the Supplier in accordance with clause 16.1. |
| **Inside IR35** | Contractual engagements which would be determined to be within the scope of the IR35 Intermediaries legislation if assessed using the ESI tool. |
| **Insolvency event** | Can be:* a voluntary arrangement
* a winding-up petition
* the appointment of a receiver or administrator
* an unresolved statutory demand
* a Schedule A1 moratorium
 |
| **Intellectual Property Rights or IPR** | Intellectual Property Rights are:* copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information
* applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction
* all other rights having equivalent or similar effect in any country or jurisdiction
 |
| **Intermediary** | For the purposes of the IR35 rules an intermediary can be:* the supplier's own limited company
* a service or a personal service company
* a partnership

It does not apply if you work for a client through a Managed Service Company (MSC) or agency (for example, an employment agency). |
| **IPR claim** | As set out in clause 11.5. |
| **IR35** | IR35 is also known as ‘Intermediaries legislation’. It’s a set of rules that affect tax and National Insurance where a Supplier is contracted to work for a client through an Intermediary. |
| **IR35 assessment** | Assessment of employment status using the ESI tool to determine if engagement is Inside or Outside IR35. |
| **Know-How** | All ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the G-Cloud Services but excluding know-how already in the Supplier’s or CCS’s possession before the Start date. |
| **Law** | Any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply. |
| **LED** | Law Enforcement Directive (EU) 2016/680. |
| **Loss** | All losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and '**Losses**' will be interpreted accordingly. |
| **Lot** | Any of the 3 Lots specified in the ITT and Lots will be construed accordingly. |
| **Malicious Software** | Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence. |
| **Management Charge** | The sum paid by the Supplier to CCS being an amount of up to 1% but currently set at 0.75% of all Charges for the Services invoiced to Buyers (net of VAT) in each month throughout the duration of the Framework Agreement and thereafter, until the expiry or End of any Call-Off Contract. |
| **Management Information** | The management information specified in Framework Agreement section 6 (What you report to CCS). |
| **Material Breach** | Those breaches which have been expressly set out as a Material Breach and any other single serious breach or persistent failure to perform as required under this Call-Off Contract. |
| **Ministry of Justice Code** | The Ministry of Justice’s Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000. |
| **New Fair Deal** | The revised Fair Deal position in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 as amended. |
| **Order** | An order for G-Cloud Services placed by a contracting body with the Supplier in accordance with the ordering processes. |
| **Order Form** | The order form set out in Part A of the Call-Off Contract to be used by a Buyer to order G-Cloud Services. |
| **Ordered G-Cloud Services** | G-Cloud Services which are the subject of an order by the Buyer. |
| **Outside IR35** | Contractual engagements which would be determined to not be within the scope of the IR35 intermediaries legislation if assessed using the ESI tool. |
| **Party** | The Buyer or the Supplier and ‘Parties’ will be interpreted accordingly. |
| **Personal Data** | Takes the meaning given in GDPR. |
| **Personal Data Breach** | Takes the meaning given in GDPR. |
| **Processing** | Takes the meaning given in GDPR. |
| **Processor** | Takes the meaning given in GDPR. |
| **Prohibited act** | To directly or indirectly offer, promise or give any person working for or engaged by a Buyer or CCS a financial or other advantage to:* induce that person to perform improperly a relevant function or activity
* reward that person for improper performance of a relevant function or activity
* commit any offence:
	+ under the Bribery Act 2010
	+ under legislation creating offences concerning Fraud
	+ at common Law concerning Fraud
	+ committing or attempting or conspiring to commit Fraud
 |
| **Project Specific IPRs** | Any intellectual property rights in items created or arising out of the performance by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call-Off Contract including databases, configurations, code, instructions, technical documentation and schema but not including the Supplier’s Background IPRs. |
| **Property** | Assets and property including technical infrastructure, IPRs and equipment. |
| **Protective Measures** | Appropriate technical and organisational measures which may include: pseudonymisation and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it. |
| **PSN or Public Services Network** | The Public Services Network (PSN) is the government’s high-performance network which helps public sector organisations work together, reduce duplication and share resources. |
| **Regulatory body or bodies** | Government departments and other bodies which, whether under statute, codes of practice or otherwise, are entitled to investigate or influence the matters dealt with in this Call-Off Contract. |
| **Relevant person** | Any employee, agent, servant, or representative of the Buyer, any other public body or person employed by or on behalf of the Buyer, or any other public body. |
| **Relevant Transfer** | A transfer of employment to which the employment regulations applies. |
| **Replacement Services** | Any services which are the same as or substantially similar to any of the Services and which the Buyer receives in substitution for any of the services after the expiry or Ending or partial Ending of the Call-Off Contract, whether those services are provided by the Buyer or a third party. |
| **Replacement supplier** | Any third-party service provider of replacement services appointed by the Buyer (or where the Buyer is providing replacement Services for its own account, the Buyer). |
| **Security management plan** | The Supplier's security management plan developed by the Supplier in accordance with clause 16.1. |
| **Services** | The services ordered by the Buyer as set out in the Order Form. |
| **Service data** | Data that is owned or managed by the Buyer and used for the G-Cloud Services, including backup data. |
| **Service definition(s)** | The definition of the Supplier's G-Cloud Services provided as part of their Application that includes, but isn’t limited to, those items listed in Section 2 (Services Offered) of the Framework Agreement. |
| **Service description** | The description of the Supplier service offering as published on the Digital Marketplace. |
| **Service Personal Data** | The Personal Data supplied by a Buyer to the Supplier in the course of the use of the G-Cloud Services for purposes of or in connection with this Call-Off Contract. |
| **Spend controls** | The approval process used by a central government Buyer if it needs to spend money on certain digital or technology services, see<https://www.gov.uk/service-manual/agile-delivery/spend-controls-check-if-you-need-approval-to-spend-money-on-a-service> |
| **Start date** | The Start date of this Call-Off Contract as set out in the Order Form. |
| **Subcontract** | Any contract or agreement or proposed agreement between the Supplier and a subcontractor in which the subcontractor agrees to provide to the Supplier the G-Cloud Services or any part thereof or facilities or goods and services necessary for the provision of the G-Cloud Services or any part thereof. |
| **Subcontractor** | Any third party engaged by the Supplier under a subcontract (permitted under the Framework Agreement and the Call-Off Contract) and its servants or agents in connection with the provision of G-Cloud Services. |
| **Subprocessor** | Any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract. |
| **Supplier** | The person, firm or company identified in the Order Form. |
| **Supplier Representative** | The representative appointed by the Supplier from time to time in relation to the Call-Off Contract. |
| **Supplier staff** | All persons employed by the Supplier together with the Supplier’s servants, agents, suppliers and subcontractors used in the performance of its obligations under this Call-Off Contract. |
| **Supplier terms** | The relevant G-Cloud Service terms and conditions as set out in the Terms and Conditions document supplied as part of the Supplier’s Application. |
| **Term** | The term of this Call-Off Contract as set out in the Order Form. |
| **Variation** | This has the meaning given to it in clause 32 (Variation process). |
| **Working Days** | Any day other than a Saturday, Sunday or public holiday in England and Wales. |
| **Year** | A contract year. |

## Schedule 7: GDPR Information

This schedule reproduces the annexes to the GDPR schedule contained within the Framework Agreement and incorporated into this Call-off Contract.

### Annex 1: Processing Personal Data

This Annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with the Buyer at its absolute discretion.

1.1 The contact details of the Buyer’s Data Protection Officer are: advice.dpa@hmrc.gov.uk.

1.2 The contact details of the Supplier’s Data Protection Officer are: data.protection.uk@reply.com

1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.

1.4 Any such further instructions shall be incorporated into this Annex.

|  |  |
| --- | --- |
| **Descriptions** | **Details** |
| Identity of Controller for each Category of Personal Data | The Parties acknowledge that in accordance with paragraph 2-15 Framework Agreement Schedule 4 (Where the Party is a Controller and the other Party is Processor) and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor of the following Personal Data:The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Buyer is the Processor in accordance with paragraph 2 to paragraph 15 of the following Personal Data:The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:* Business contact details of Supplier Personnel for which the Supplier is the Controller
* Business contact details of any directors, officers, employees, agents, consultants and contractors of Buyer (excluding the Supplier Personnel) engaged in the performance of the Buyer’s duties under the Contract) for which the Buyer is the Controller
 |
| Duration of the Processing | [HMRC Privacy Notice - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/data-protection-act-dpa-information-hm-revenue-and-customs-hold-about-you/data-protection-act-dpa-information-hm-revenue-and-customs-hold-about-you) |
| Nature and purposes of the Processing | The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.The purpose might include: employment Processing, statutory obligation, recruitment assessment etc] |
| Type of Personal Data | [HMRC Privacy Notice - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/data-protection-act-dpa-information-hm-revenue-and-customs-hold-about-you/data-protection-act-dpa-information-hm-revenue-and-customs-hold-about-you) |

### Annex 2: Joint Controller Agreement

#### 1. Joint Controller Status and Allocation of Responsibilities

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of paragraphs 2 to 15 of Schedule 4 of the Framework Agreement (Where one Party is Controller and the other Party is Processor) and paragraphs 17-27 of Schedule 4 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that:

(a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;

(b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;

(c) is solely responsible for the Parties’ compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;

(d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and

(e) shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in both parties privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

1.3 Notwithstanding the terms of clause 1.2, the Parties acknowledge that a data subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

#### 2. Undertakings of both Parties

2.1 The Supplier and the Buyer each undertake that they shall:

(a) report to the other Party every 12 months on:

(i) the volume of Data Subject Request (or purported Data Subject Requests) from Data Subjects (or third parties on their behalf);

(ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;

(iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party’s obligations under applicable Data Protection Legislation;

(iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and

(v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law, that it has received in relation to the subject matter of the Contract during that period;

(b) notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1(a)(i) to (v);

(c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses

2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;

(d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;

(e) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;

(f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;

(g) take all reasonable steps to ensure the reliability and integrity of any of its personnel who have access to the Personal Data and ensure that its personnel:

(i) are aware of and comply with their ’s duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information

(ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;

(iii) have undergone adequate training in the use, care, protection and handling of Personal Data as required by the applicable Data Protection Legislation;

(h) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:

(i) nature of the data to be protected;

(ii) harm that might result from a Data Loss Event;

(iii) state of technological development; and

(iv) cost of implementing any measures;

(i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and

(i) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.

2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

#### 3. Data Protection Breach

3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

(a) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;

(b) all reasonable assistance, including:

(i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;

(ii) co-operation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;

(iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;

and/or

(iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 3.2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that Party’s own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

(a) the nature of the Personal Data Breach;

(b) the nature of Personal Data affected;

(c) the categories and number of Data Subjects concerned;

(d) the name and contact details of the Supplier’s Data Protection Officer or other relevant contact from whom more information may be obtained;

(e) measures taken or proposed to be taken to address the Personal Data Breach; and

(f) describe the likely consequences of the Personal Data Breach.

#### 4. Audit

4.1 The Supplier shall permit:

(a) the Buyer, or a third-party auditor acting under the Buyer’s direction, to conduct, at the Buyer’s cost, data privacy and security audits, assessments and inspections concerning the Supplier’s data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or

(b) the Buyer, or a third-party auditor acting under the Buyer’s direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 GDPR by the Supplier so far as relevant to the contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

4.2 The Buyer may, in its sole discretion, require the Supplier to provide evidence of the Supplier’s compliance with Clause 4.1 in lieu of conducting such an audit, assessment or inspection.

#### 5. Impact Assessments

5.1 The Parties shall:

(a) provide all reasonable assistance to the each other to prepare any data protection impact assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and

(b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the contract, in accordance with the terms of Article 30 GDPR.

#### 6. ICO Guidance

6.1 The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant central government body. The Buyer may on not less than thirty (30) Working Days’ notice to the Supplier amend the contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant central government body.

#### 7. Liabilities for Data Protection Breach

7.1 If financial penalties are imposed by the Information Commissioner on either the Buyer or the Supplier for a Personal Data Breach ("Financial Penalties") then the following shall occur:

(a) if in the view of the Information Commissioner, the Buyer is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Buyer, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Buyer, then the Buyer shall be responsible for the payment of such Financial Penalties. In this case, the Buyer will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Supplier shall provide to the Buyer and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;

(b) if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request and at the Supplier’s sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or

(c) if no view as to responsibility is expressed by the Information Commissioner, then the Buyer and the Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any Financial Penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the procedure set out in clauses 8.66 to 8.79 of the Framework terms (Managing disputes).

7.2 If either the Buyer or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction (“Court”) by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the Court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.

7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the “Claim Losses”):

(a) if the Buyer is responsible for the relevant Personal Data Breach, then the Buyer shall be responsible for the Claim Losses;

(b) if the Supplier is responsible for the relevant Personal Data Breach, then the Supplier shall be responsible for the Claim Losses: and

(c) if responsibility for the relevant Personal Data Breach is unclear, then the Buyer and the Supplier shall be responsible for the Claim Losses equally.

7.4 Nothing in either clause 7.2 or clause 7.3 shall preclude the Buyer and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Buyer.

#### 8. Not used

#### 9. Termination

9.1 If the Supplier is in material Default under any of its obligations under this Annex 2 (joint controller agreement), the Buyer shall be entitled to terminate the contract by issuing a termination notice to the Supplier in accordance with Clause 18.5 (Ending the contract).

#### 10. Sub-Processing

10.1 In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:

(a) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the contract, and provide evidence of such due diligence to the other Party where reasonably requested; and

(b) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

#### 11. Data Retention

11.1 The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the a Party for statutory compliance purposes or as otherwise required by the contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

## Schedule 8: HMRC Mandatory Additional Clauses

**AUTHORITY’S MANDATORY TERMS**

1. For the avoidance of doubt, references to ‘the Agreement’ mean the attached Call-Off Contract between the Supplier and the Authority. References to ‘the Authority’ mean ‘the Buyer’ (the Commissioners for Her Majesty’s Revenue and Customs).
2. The Agreement incorporates the Authority’s mandatory terms set out in this Schedule 8.
3. In case of any ambiguity or conflict, the Authority’s mandatory terms in this Schedule 8 will supersede any other terms in the Agreement.
4. **Definitions**

|  |  |
| --- | --- |
| **“Affiliate”**  | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;  |
| **“Authority Data”**  | 1. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
2. supplied to the Supplier by or on behalf of the Authority; and/or
3. which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
4. any Personal Data for which the Authority is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified;
 |
| **“Charges”**   | the charges for the Services as specified in this order form.   |
| **“Connected Company”**  | means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person;  |
| **“Control”**  | the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly;  |
| **“Controller”, “Processor”, “Data Subject”,**  | take the meaning given in the GDPR;    |
| **“Data Protection Legislation”**  | 1. the GDPR, the Law Enforcement Directive (Directive EU 2016/680) and any applicable national implementing Laws as amended from time to time;
2. the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy;
3. all applicable Law about the processing of personal data and privacy;
 |
| **“GDPR”**   | the General Data Protection Regulation (Regulation (EU) 2016/679);  |
| **“Key Subcontractor”**  | any Subcontractor: 1. which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or
2. with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Call-Off Contract;
 |
| **“Law”**  | any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;  |
| **“Personal Data”**  | has the meaning given in the GDPR;   |
| **“Purchase Order Number”**   | the Authority’s unique number relating to the supply of the Services;    |
| **“Services”**   | the services to be supplied by the Supplier to the Authority under the Agreement, including the provision of any Goods;  |
| **“Subcontract”**  | any contract or agreement (or proposed contract or agreement) between the Supplier (or a Subcontractor) and any third party whereby that third party agrees to provide to the Supplier (or the Subcontractor) all or any part of the Services, or facilities or services which are material for the provision of the Services, or any part thereof or necessary for the management, direction or control of the Services or any part thereof;  |
| **“Subcontractor”**  | any third party with whom: 1. the Supplier enters into a Subcontract; or
2. a third party under (a) above enters into a Subcontract,

or the servants or agents of that third party;  |
| **“Supplier Personnel”**  | all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;   |
| **“Supporting Documentation”**  | sufficient information in writing to enable the Authority to reasonably verify the accuracy of any invoice;   |
| **“Tax”**  | 1. all forms of tax whether direct or indirect;
2. national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;
3. all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions. levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and
4. any penalty, fine, surcharge, interest, charges or costs relating to any of the above,

in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;  |
| **“Tax Non-Compliance”**   | where an entity or person under consideration meets all 3 conditions contained in the relevant excerpt from HMRC’s “Test for Tax Non-Compliance”, as set out in Annex 1, where: 1. the “Economic Operator” means the Supplier or any agent, supplier or Subcontractor of the Supplier requested to be replaced pursuant to Clause 4.3; and
2. any “Essential Subcontractor” means any Key Subcontractor;
 |
| **“VAT”**  | value added tax as provided for in the Value Added Tax Act 1994.  |

1. **Payment and Recovery of Sums Due**
2. The Supplier shall invoice the Authority as specified in this order form. Without prejudice to the generality of the invoicing procedure specified in the Agreement, the Supplier shall procure a Purchase Order Number from the Authority prior to the commencement of any Services and the Supplier acknowledges and agrees that should it commence Services without a Purchase Order Number:
3. the Supplier does so at its own risk; and
4. the Authority shall not be obliged to pay any invoice without a valid Purchase Order Number having been provided to the Supplier.
5. Each invoice and any Supporting Documentation required to be submitted in accordance with the invoicing procedure specified in the Agreement shall be submitted by the Supplier, as directed by the Authority from time to time via the Authority’s electronic transaction system.
6. If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Authority 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 Authority.  The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.

1. **Warranties**
2. The Supplier represents and warrants that:
3. in the three years prior to the Effective Date, it has been in full compliance with all applicable securities and Laws related to Tax in the United Kingdom and in the jurisdiction in which it is established;
4. it has notified the Authority in writing of any Tax Non-Compliance it is involved in; and
5. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier’s assets or revenue and the Supplier has notified the Authority of any profit warnings issued in respect of the Supplier in the three years prior to the Effective Date.
6. If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 3.1.1, 3.1.2 and/or 3.1.3 has been breached, is untrue, or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.
7. In the event that the warranty given by the Supplier pursuant to Clause 3.1.2 is materially untrue, the Authority shall be entitled to terminate the Agreement pursuant to the Call-Off clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

1. **Promoting Tax Compliance**
2. All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
3. To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.
4. The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material Services under the Agreement by that agent, supplier or Subcontractor.  Upon a request by the Authority, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement.
5. If, at any point during the Term, there is Tax Non-Compliance, the Supplier shall:
6. notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
7. promptly provide to the Authority:
8. details of the steps which the Supplier is taking to resolve the Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
9. such other information in relation to the Tax Non-Compliance as the Authority may reasonably require.
10. The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement.  Any amounts due under this Clause 4.5 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.
11. Upon the Authority’s request, the Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.
12. If the Supplier:
13. fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with Clauses 4.2, 4.4.1 and/or 4.6 this may be a material breach of the Agreement;
14. fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with a reasonable request by the Authority that it must not contract, or must cease to contract, with any agent, supplier or Subcontractor of the Supplier as required by Clause 4.3 on the grounds that the agent, supplier or Subcontractor of the Supplier is involved in Tax Non-Compliance this shall be a material breach of the Agreement; and/or
15. fails to provide details of steps being taken and mitigating factors pursuant to Clause 4.4.2 which in the reasonable opinion of the Authority are acceptable this shall be a material breach of the Agreement;

and any such material breach shall allow the Authority to terminate the Agreement pursuant to the Call-Off Clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

1. The Authority may internally share any information which it receives under Clauses 4.3 to 4.4 (inclusive) and 4.6, for the purpose of the collection and management of revenue for which the Authority is responsible.

1. **Use of Off-shore Tax Structures**
2. Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract (**“Prohibited Transactions”**). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties’ business.
3. The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.
4. In the event of a Prohibited Transaction being entered into in breach of Clause 5.1 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 5.1 and 5.2, the Parties (and the Supplier shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the escalation process in the Agreement.
5. Failure by the Supplier (or a Key Subcontractor) to comply with the obligations set out in Clauses 5.2 and 5.3 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

1. **Data Protection and off-shoring**
2. The Processor shall, in relation to any Personal Data processed in connection with its obligations under the Agreement:
3. not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
4. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
5. the Data Subject has enforceable rights and effective legal remedies;
6. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
7. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
8. Failure by the Processor to comply with the obligations set out in Clause 6.1 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

1. **Commissioners for Revenue and Customs Act 2005 and related Legislation**
2. The Supplier shall comply with and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 18 of the Commissioners for Revenue and Customs Act 2005 (‘CRCA’) to maintain the confidentiality of Authority Data.  Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 19 of CRCA.
3. The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Supplier’s obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.
4. The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel who will have access to, or are provided with, Authority Data in writing of the obligations upon Supplier Personnel set out in Clause 7.1 above.  The Supplier shall monitor the compliance by Supplier Personnel with such obligations.
5. The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data sign (or have previously signed) a Confidentiality Declaration, in the form provided at Annex 2. The Supplier shall provide a copy of each such signed declaration to the Authority upon demand.
6. In the event that the Supplier or the Supplier Personnel fail to comply with this Clause 7, the Authority reserves the right to terminate the Agreement with immediate effect pursuant to the clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

Page Break **Annex 1**

**Excerpt from HMRC’s “Test for Tax Non-Compliance”**

*Condition one (An in-scope entity or person)*

1. There is a person or entity which is either: (“X”)

1. The Economic Operator or Essential Subcontractor (EOS)
2. Part of the same Group of companies of EOS. An entity will be treated as within the same Group of EOS where that entities’ financial statements would be required to be consolidated with those of EOS if prepared in accordance with *IFRS 10 Consolidated Financial Accounts1*;
3. Any director, shareholder or other person (P) which exercises control over EOS. ‘Control’ means P can secure, through holding of shares or powers under articles of association or other document that EOS’s affairs are conducted in accordance with P’s wishes.

*Condition two (Arrangements involving evasion, abuse or tax avoidance)*

1. X has been engaged in one or more of the following:

1. Fraudulent evasion2;
2. Conduct caught by the General Anti-Abuse Rule3;
3. Conduct caught by the Halifax Abuse principle4;
4. Entered into arrangements caught by a DOTAS or VADR scheme5;
5. Conduct caught by a recognised ‘anti-avoidance rule’6 being a statutory provision which targets arrangements where either a main purpose, or an expected benefit, is to obtain a tax advantage or where the arrangement is not affected for commercial purposes. ‘Targeted Anti-Avoidance Rules’ (TAARs). It may be useful to confirm that the Diverted Profits Tax is a TAAR for these purposes;
6. Entered into an avoidance scheme identified by HMRC’s published Spotlights list7;
7. Engaged in conduct which falls under rules in other jurisdictions which are equivalent or similar to (a) to (f) above.

*Condition three (Arrangements are admitted, or subject to litigation/prosecution or identified in a published list (Spotlights))*

1. X’s activity in *Condition 2* is, where applicable, subject to dispute and/or litigation as follows:

1. In respect of (a), either X:
2. Has accepted the terms of an offer made under a Contractual Disclosure Facility (CDF) pursuant to the Code of Practice 9 (COP9) procedure8; or,
3. Has been charged with an offence of fraudulent evasion.
4. In respect of (b) to (e), once X has commenced the statutory appeal process by filing a Notice of Appeal and the appeal process is ongoing including where the appeal is stayed or listed behind a lead case (either formally or informally). NB Judicial reviews are not part of the statutory appeal process and no supplier would be excluded merely because they are applying for judicial review of an HMRC or HMT decision relating to tax or national insurance.
5. In respect of (b) to (e), during an HMRC enquiry, if it has been agreed between HMRC and X that there is a pause with the enquiry in order to await the outcome of related litigation.
6. In respect of (f) this condition is satisfied without any further steps being taken.
7. In respect of (g) the foreign equivalent to each of the corresponding steps set out above in (i) to (iii).

For the avoidance of doubt, any reference in this Annex 1 to any Law includes a reference to that Law as amended, extended, consolidated or reenacted from time to time including any implementing or successor legislation.

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**Annex 2 Form**

**CONFIDENTIALITY DECLARATION**

CONTRACT REFERENCE: (‘the Agreement’)

DECLARATION:

I solemnly declare that:

1. I am aware that the duty of confidentiality imposed by section 18 of the Commissioners for Revenue and Customs Act 2005 applies to Authority Data (as defined in the Agreement) that has been or will be provided to me in accordance with the Agreement.
2. I understand and acknowledge that under Section 19 of the Commissioners for Revenue and Customs Act 2005 it may be a criminal offence to disclose any Authority Data provided to me.

|  |
| --- |
| SIGNED: |
| FULL NAME: |
| POSITION: |
| COMPANY: |
| DATE OF SIGNATURE: |