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G-CLOUD 8 CALL-OFF CONTRACT

This Call-Off Contract for the G-Cloud 8 Framework Agreement (RM1557viii) includes:

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Part A - Order Form

Buyer	Department for Communities & Local Government, 2 Marsham St, London SW1P 4DF
Service reference	NA
Supplier	Arcus Global Ltd Future Business Centre, Kings Hedges Road, Cambridge, CB4 2HY
Call-Off Contract ref.	CPD04/118/009 Variation 01 31/08/18
Call-Off Contract title	Amazon Web Services (AWS) Managed Application Platform and Services
G-Cloud Framework No.	G-Cloud 8
Call-Off Contract description	Provision of services including secure hosting and support to DataMart, Data Sciences and Shared Services Application platforms.
Start date	01-07-2017
End date	30-06-2019
Call-Off Contract value excl VAT	£959,593.54 hosting and support services for 24 months, plus estimated costs up to £400,000.00 for T&M work that may be required during the term (any extra work must be formally agreed by both parties before commencement). Variation 01 31/8/19 – additional costs of £696,000.00 to cover hosting and T&M for remaining contract term. New contract total £2,055,593.54 excluding VAT. Variation 02 14/03/2019 – additional costs of £75,970.00 to cover migration/exit services as agreed with Mike Cotton. Variation 03 14/03/2019 – additional costs of £480,000.00 for remainder of contract term. New contract total £2,611,563.54 excluding VAT
Charging method	Invoice monthly in arrears
Purchase order No.	4500334030 for Variation 03/TBA for Variation 02

This Order Form is issued in accordance with the G-Cloud 8 Framework Agreement (RM1557viii).

This Order Form may be used by Buyers to specify their G-Cloud service requirements when placing an Order.

The Order Form cannot be used to alter existing terms or add any supplementary terms that materially change the Deliverables offered by the Supplier and defined in the Tender documents, such as the Service Definition and the Supplier Terms.

There are terms within the Call-Off Contract that may be defined in the Order Form. These are identified in the contract with the use of square brackets e.g. “[this is a term you can alter]”.

Project reference: Amazon Web Services (AWS) Managed Application Platform & Services
Buyer reference: CPD04/118/009. Variation 01 added 31/8/18. Variation 02 and 03 added 14/03/2019

Order date: 01-07-2017/Variation 01 31/8/18/Variation 02 and 03 14/03/2019

Purchase order: 4500334030

From: the Buyer Department for Communities & Local Government
Fry Building, 2 Marsham St, London SW1P 4DF

To: the Supplier

Arcus Global Ltd
Future Business Centre,
Hedges Road,
Cambridge,
CB4 2HY.
Company number: 06946606

Together: the “Parties”

Principle contact details

For the Buyer:	Name & title:	Redacted
	Email:	
	Phone:	
For the supplier	Name & title:	Redacted
	Email:	
	Phone:	

Call-off contract term

Commencement date: This Call-Off Contract commences on 01-07-2017 and is valid until 30-06-2019.

Termination: In accordance with Call-Off Contract clause 23 the notice period required for Termination is at least 90 working days from the date of written notice for disputed sums or at least 30 days from the date of written notice for termination without cause.

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 utilized by Buyer may vary from time to time during the course of this Call-Off Contract, subject always to the terms of the Call-Off Contract.

G-Cloud 8 Lot This Call-Off Contract is for the provision of Services (previously provided under call off contract reference CPD04/109/143 and CPD04/117/166) under
Lot 1 IaaS
Lot 2 PaaS
Lot 4 Specialist Cloud Services

G-Cloud 8 services required: The Services to be provided by the Supplier under the above Lot are outlined below:

- Arcus AWS Managed Application Platform - 238220536490665
- Arcus AWS Architecture & Design Services - 401370212017681
- Arcus Amazon Web Services (AWS) Deployment, Integration and Migration – 7136120075666128
- Arcus Cloud Solution Brokerage - 7499998435597104
- Lot 1 Arcus AWS services as required

Additional Services: The following third party services / software:
Cohesive.net VNS3
Cpanel
Jaspersoft
MobaXTerm

Microsoft RDS
Skeddly
Symantic VIP
Trend Micro Deep Security Management

Location:	The Services will be delivered to DCLG, Fry Building, 2 Marsham St, London SW1P 4DF and the Internet.
Quality standards:	The supplier should be certified to; • ISO 27001:2013 security standard. • ISO 9001:2015 Quality Management Standard.
Technical standards	Consultancy work under this contract will be approved via a Call-Off Form, the template for which is listed in Annex E. There is no requirement for PSN compliance.
On-boarding	The on-boarding plan for this Call-Off Contract is – NA supplier already providing service.
Off-boarding	The off-boarding plan for this Call-Off Contract is provided in Annex D – Exit Plan (redacted)
Limit on supplier's liability:	In accordance with Call-Off Contract clause 31.5, the Limit on supplier's liability for direct loss, destruction, corruption, degradation or damage to the Buyer Data or the Buyer Personal Data or any copy of such Buyer Data is £5,000,000.
Insurance:	In accordance with Call-Off Contract clause 10, the insurance(s) required will be: A minimum insurance period of 6 years following the expiration or earlier termination of this Call-Off Contract. Professional indemnity insurance cover to be held by the Supplier and by any agent, Sub-Contractor or consultant involved in the supply of the G-Cloud Services. This professional indemnity insurance cover will have a minimum limit of indemnity of £5,000,000 for each individual claim or such higher limit as the Buyer may reasonably require (and as required by Law). Employers' liability insurance with a minimum limit of £5,000,000 or such higher minimum limit as required by Law from time to time

Buyer's Responsibilities

The Buyer is responsible for providing:

- Prompt access to strategies and relevant information.
- Project Point of Contact.
- Stakeholder Availability
- Site Access/On boarding
- Project/Work Area
- Management of the relationship with the application suppliers where appropriate
- Prompt payment of invoices

Buyer's equipment

The Buyer's equipment to be used in connection with this Call-Off Contract includes – NA.

Supplier's information**Commercially sensitive information:**

The following is a list of the Supplier's commercially sensitive information:

- AWS design patterns and scripts
- CMAAS portal

Subcontractors / Partners:

The following is a list of the Supplier's Subcontractors/Partners: Amazon Web Services UK Limited (AWS), Company Registration Number 08650665, 60 Holborn Viaduct, London, EC1A 2FD.

Call-Off Contract Charges and payment

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

Payment method (GPC or BACS):

The method of payment for this Call-Off Contract is BACS.

Payment profile:

The payment profile for this Call-Off Contract is invoices monthly in arrears with supporting evidence as required.

Invoice details:

The Supplier shall issue electronic invoices monthly in arrears. In accordance with Call-Off Contract clause 8, the Buyer will pay the Supplier within 30 calendar days of receipt of a valid invoice.

Who and where to send invoices to:

Invoices shall be sent to:
Central Invoice Processing Team
4th Floor
High Trees
Hillfield Road

Hemel Hempstead
Hertfordshire HP2 4XN

**Invoice information
required – eg PO,
project ref, etc.**

All invoices must include a valid PO number and supporting evidence as required.

Invoice frequency

Invoices will be sent to the Buyer monthly in arrears.

**Call-Off Contract
value excl VAT:**

The value of this Call-Off Contract is for £959,593.54 for agreed hosting and support services, plus estimated costs up to £400,000.00 for T&M work that may be required during the term.

Variation 01 31/8/18 – additional costs of £696,000.00 to cover hosting and T&M for remaining contract term.

Variation 02 14/03/2019 – additional costs of £75,970.00 to cover migration/exit services as agreed with Mike Cotton.

Variation 03 14/03/2019 – additional costs of £480,000.00 for remainder of contract term.

Additional Buyer terms

Performance of the service and deliverables This Call-Off Contract will include the following implementation plan and milestones:

- Provision of ongoing hosting on AWS as evidenced by ongoing DCLG access to services
- Provision of ongoing support as evidenced by the ability for DCLG to raise and resolve support tickets and review monthly managed service reports
- Provision of consultancy deliverables as defined in individual call-off forms using the template in Annex E

Collaboration agreement The Buyer does not require the Supplier to enter into a Collaboration Agreement.

Warranties, representations The supplier shall deliver the requirements of this contract in accordance with Call-Off Contract clause 6

Supplemental requirements in addition to the call-off terms Arcus Global Terms listed in Annex C.

Buyer specific amendments to/refinements of the Call-Off Contract terms The Call-Off Contract terms have been varied to include new provisions for Intellectual Property Rights at clauses 13.2 – 13.5.

Public Services Network (PSN) The Public Services Network (PSN) is the Government's high-performance network which helps public sector organisations work together, reduce duplication and share resources.

If the required G-Cloud Services are to be delivered over the Public Services Network this should be detailed in the Call-Off Contract Order Form.

Delivery of PSN Compliant Services

If requested to do so by the Buyer, the Supplier shall ensure that the G-Cloud Services adhere to the conditions and obligations identified in the PSN Code of Practice at the Supplier's cost.

If any PSN Services are Sub-Contracted by the Supplier, the Supplier must ensure that services have the relevant PSN compliance certification, which includes:

- Buyer environments
- communications components
- compliant and certified

Role of the PSN authority

The Supplier will immediately disconnect its G-Cloud Services from the PSN if instructed to do so by the PSN Authority following an event affecting national security, or the security of the PSN. The Supplier agrees that the PSN Authority shall not be liable for any actions, damages, costs, and any other liabilities which may arise as a consequence.

- This clause may be enforced by the PSN Authority, notwithstanding the fact that the PSN Authority is not a party to this Call-Off Contract.
- If the PSN authority chooses to disconnect the supplier's services from the PSN, Arcus Global shall neither be liable to the client for a failure to provide those services nor be required to reconnect those services for free.

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 In accordance with the Buying process set out in the Framework Agreement, this Call-Off Contract will be formed when the Buyer acknowledges the receipt of the signed copy of the Order Form from the Supplier.
- 1.4 The terms and conditions of the Call-Off Contract and Order Form will supersede those of the Supplier Terms and Conditions.

2. Background to the agreement

- (A) The Supplier is a provider of G-Cloud Services and undertook to provide such Services under the terms set out in Framework Agreement number RM1557viii (the "Framework Agreement").
- (B) The Buyer served an Order Form for Services to the Supplier.

SIGNED:

	Supplier:	Buyer:
Name:	Arcus Global Ltd	
Title:	AWS Practice Director	
Signature:		
Date:		

Part B - The Schedules**Schedule 1 - Deliverable**

Service	Detailed description or link to G-Cloud service descriptions	Evidence of effective provision
AWS hosting	Arcus Cloud Solution Brokerage - 7499998435597104 Lot 1 Arcus AWS services as required	• Ongoing DCLG access to hosted services • Dynamic reports on live services via the CMAAS portal
AWS managed service	Arcus AWS Managed Application Platform - 238220536490665	• DCLG is able to raise and resolve support tickets • DCLG can review monthly managed service reports
T&M professional services	Arcus AWS Architecture & Design Services - 401370212017681 Arcus Amazon Web Services (AWS) Deployment, Integration and Migration – 7136120075666128	• As defined in individual call-off forms using the template in Annex E and approved by DCLG • Work done matches agreed call-off forms

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) cannot be amended during

the term of the Call-Off Contract. The detailed breakdown for the provision of Services during the term will include (but will not be limited to):

- Consultancy charges will be £895 per day for implementation work, £995 per day for project management and £1,095 per day for architecture and design.
- AWS infrastructure charges will be billed at the GBP equivalent of their USD amount using an exchange rate that will track the market and vary from time to time.
- Managed services (support) charges will be billed at 40% of the monthly AWS infrastructure charges
- AWS Business Support charges will be billed at 10% of the monthly AWS infrastructure charges
- Third party services and software will be billed with an added 10% handling charge

Schedule 3 - Deed of guarantee – Not used

Schedule 4 - Alternative Clauses – Not used

Part C – Terms and conditions

1. Call-Off Contract start date, length and methodology

- 1.1 The Supplier will start providing the Services on the date specified in the Order Form.
- 1.2 This Call-Off Contract will terminate on the End Date specified in the Order Form unless terminated earlier in accordance with Clause 23 and will be a maximum of 24 months from the Commencement Date.

2. Overriding provisions

- 2.1 The Supplier agrees to supply the G-Cloud Services [and any Additional Services (Lot 4 only)] in accordance with this Call-Off Contract and the Supplier's Terms as identified in the Framework Agreement (G-Cloud Services) and incorporated into this Call-Off Contract.
- 2.2 In the event of and only to the extent of any conflict or ambiguity between the Clauses of this Call-Off Contract, the provisions of the Schedules, any document referred to in the Clauses of this Call-Off Contract (including Supplier's Terms) and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:

- the Framework Agreement
- the Clauses of this Call-Off Contract (excluding Supplier Terms)
- the completed Order Form
- the Supplier's Terms and Conditions, and
- any other document referred to in the Clauses of this Call-Off Contract.

The Supplier accepts this is the order of prevailing provisions in this Call-Off Contract.

3. Transfer and sub-contracting

- 3.1 The Supplier will not assign, novate or sub-contract any part-of this Call-Off Contract without the Buyer's prior written approval which shall not be unreasonably withheld or delayed.
- 3.2 The Supplier will be responsible for the performance of any Sub-Contractors.
- 3.3 The Buyer may assign, novate or otherwise dispose of its rights and obligations under this Call-Off Contract or any part thereof to:
 - any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Buyer, or
 - any private sector body which substantially performs the functions of the Buyer

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

4. Supplier Staff

4.1 The Supplier Staff will:

- fulfil all reasonable requests of the Buyer
- apply all due skill, care and diligence to the provisions of the Services
- be appropriately experienced, qualified and trained to supply the Services
- respond to any enquiries about the Services as soon as reasonably possible
- complete any necessary vetting procedures specified by the Buyer
- Comply with the provisions of the Official Secrets Act 1911 to 1989; and
- Section 182 of the Finance Act 1989.

5. Due diligence

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

5.2.1 having made their own enquiries are satisfied by the accuracy of any information supplied by the other Party

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

5.2.3 have entered into this Call-Off Contract relying on their own due diligence

6. Warranties, representations and acceptance criteria

6.1 The Supplier will perform its obligations under this Call-Off Contract with all reasonable care, skill and diligence, according to Good Industry Practice.

6.2 The Supplier will use all reasonable endeavours to prevent the introduction, creation or propagation of any disruptive elements into systems providing services to data, software or Authority Confidential Information held in electronic form.

6.3 The Supplier undertakes to the Buyer that each G-Cloud Service will meet the Buyer's acceptance criteria, as defined in the Call-Off Contract Order Form.

6.4 The Supplier warrants that it has full capacity and authority and all necessary authorisations, consents, licences and permissions and Intellectual Property Rights to perform this Call-Off Contract.

6.5 The Supplier represents that, in entering into this Call-Off Contract it has not committed any Fraud.

6.6 The Supplier undertakes to pay all taxes due from it to HMRC and will not indulge in "disguised employment" practices when delivering services under this Call-Off Contract, and

- 6.7 For the avoidance of doubt, the fact that any provision within this Call-Off Contract is expressed as a warranty shall not preclude any right of termination the Buyer may have in respect of breach of that provision by the Supplier.

7. Business continuity and disaster recovery

- 7.1 The Supplier will ensure a disaster recovery approach is captured in a clear disaster recovery plan contained within their service descriptions where appropriate and required by the Buyer.

8. Payment terms and VAT

- 8.1 The Buyer will pay the Supplier within 30 days of receipt of a valid invoice submitted by the Supplier in accordance with this Call-Off Contract.
- 8.2 The Call-Off Contract Charges are deemed to include all Charges for payment processing. All Invoices submitted to the Buyer for the Services shall be exclusive of any Management Charge.
- 8.3 All charges payable by the Buyer to the Supplier shall include VAT at the appropriate rate.
- 8.4 The Supplier will add VAT to the charges at the appropriate rate.
- 8.5 Where specified within 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 shall not recover this charge from the Buyer.
- 8.6 The Supplier will ensure that each invoice contains all appropriate references and a detailed breakdown of the G-Cloud Services supplied. The Buyer may request the Supplier provides further documentation to substantiate the invoice.
- 8.7 Supplier Sub-Contracts must oblige the Supplier to make payments to its Sub-Contractor within 30 calendar days from the receipt of a valid invoice.
- 8.8 The Supplier shall 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 shall pay all monies pursuant to this indemnity to the Buyer not less than 5 UK working days before the date upon which the tax or other liability is payable by the Buyer.
- 8.9 The Supplier shall not suspend the supply of the G-Cloud Services for Buyer's failure to pay undisputed sums of money unless the Supplier is entitled to suspend or terminate this Call-Off Contract. Interest shall be payable by the Buyer on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time).
- 8.10 In the event of a disputed invoice, the Buyer shall make payment in respect of any undisputed amount in accordance with the provisions of this Call-Off

Contract and return the invoice to the Supplier within 10 UK working days of receipt with a covering statement proposing amendments to the invoice and/or the reason for any non-payment. The Supplier shall respond within 10 UK working days of receipt of the returned invoice stating whether or not the Supplier accepts the Buyer's proposed amendments. If it does then the Supplier shall supply with the response a replacement valid invoice.

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

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

10. Insurance

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

10.1 Subcontractors

10.1.1 The Supplier will ensure that, 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 claimant's costs and expenses, for accidental death or bodily injury and loss of or damage to Property, to a minimum of £5,000,000.

10.2 Agents and professional consultants

10.2.1 The Supplier will also ensure that all agents and professional consultants involved in the supply of Services hold professional indemnity insurance to a minimum indemnity of £5,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the termination or expiry date to this Call-Off Contract to which the insurance relates.

10.2.2 The Supplier will also ensure that all agents and professional consultants involved in the supply of Services hold employers liability insurance to a minimum indemnity of £5,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the termination or expiry date to this Call-Off Contract to which the insurance relates.

10.3 Additional or extended insurance

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

10.3.2 The Supplier will provide CCS and the Buyer with the following evidence that they have complied with clause 10.3.1 above:

- a broker's verification of insurance; or
- receipts in respect of the insurance premium; or
- other evidence of payment of the latest premiums due.

10.4 Supplier liabilities

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

10.4.2 The Supplier will:

- take all risk control measures relating to the Services as it would be reasonable to expect of a contractor acting in accordance with Good Industry Practice, including the investigation and reports of claims to insurers;
- promptly notify the insurers in writing of any relevant material fact under any insurances of which the Supplier is, or becomes, aware; and
- hold all insurance policies and require any broker arranging the insurance to hold any insurance slips and other evidence of placing cover representing any of the insurance to which it is a Party.

10.4.3 The Supplier will not do or omit to do anything, which would vitiate any of the insurances.

10.5 Indemnity to principals

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

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

10.6 Cancelled, suspended, terminated or unrenewed policies

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

10.7 Premium, excess and deductible payments

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

- be liable for the premium; and
- pay such premium promptly.

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

11. Confidentiality

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

11.2 Disclosure of Confidential Information is permitted where information:

- must be disclosed to comply with legal obligations placed on the Party making the disclosure
- belongs to the Party making the disclosure (who is not under any obligation of confidentiality) before its disclosure by the information owner
- was obtained from a third party who is not under any obligation of confidentiality, before receiving it from the disclosing Party
- is, or becomes, public knowledge, other than by breach of this clause or Call-Off Contract
- is independently developed without access to the other Party's Confidential Information
- is disclosed to obtain confidential legal professional advice.

11.3 The Buyer may disclose the Supplier's Confidential Information:

- to any central government body on the basis that the information may only be further disclosed to central government bodies;
- to the UK Parliament, Scottish Parliament or Welsh or Northern Ireland Assemblies, including their committees;
- if the Buyer (acting reasonably) deems disclosure necessary or appropriate while carrying out its public functions;
- on a confidential basis to exercise its rights or comply with its obligations under this Call-Off Contract; or
- On a confidential basis to a proposed transferee, assignee or novatee of, or successor in title to, the Buyer.

11.4 References to disclosure on a confidential basis will mean disclosure subject to a confidentiality agreement or arrangement containing the same terms as those placed on the Buyer under this clause.

11.5 The Supplier may only disclose the Buyer's Confidential Information to Supplier Staff who are directly involved in the provision of the Services and who need to know the information to provide the Services. The Supplier will ensure that its Supplier Staff will comply with these obligations.

11.6 Either Party may use techniques, ideas or knowledge gained during this Call-Off Contract unless the use of these things results in them disclosing the other Party's Confidential Information where such disclosure is not permitted by the Framework Agreement, or is an infringement of Intellectual Property Rights.

11.7 Information about orders placed by a Buyer (including pricing information and the terms of any Call-Off Contract) may be published by CCS and may be shared with other Buyers. Where Confidential Information is shared with other Buyers, CCS will notify the recipient of the information that its contents are confidential.

12. Conflict of Interest

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

- 12.2 Any breach of this clause will be deemed to be a Material Breach.
- 12.3 A conflict of interest may arise in situations including where a member of the Supplier Staff:
- is related to someone in another Supplier team who both form part of the same team performing the Services under the Framework Agreement
 - has a business interest in another Supplier who is part of the same team performing the Services under the Framework Agreement
 - has been provided with, or had access to, information which would give the Supplier or an affiliated company an unfair advantage in the Tender process.
- 12.4 Where the Supplier identifies a risk of a conflict or potential conflict, they will (before starting work under this Call-Off Contract, unless otherwise agreed with the Buyer) inform the Buyer of such conflicts of interest and how they plan to mitigate the risk. Details of such mitigation arrangements are to be sent to the Buyer as soon as possible. On receiving this notification, the Buyer will, at its sole discretion, notify the Supplier if the mitigation arrangements are acceptable or whether the risk or conflict remains a Material Breach.

13. Intellectual Property Rights

- 13.1 The Supplier will have no rights to use any of the Buyer's names, logos or trademarks without the Buyer's prior written approval.
- 13.2 The Buyer will not have any right to the Intellectual Property Rights (IPRs) of the Supplier or its licensors, including the Supplier Background IPRs.
- 13.3 The Supplier will not, without prior written approval from the Customer, include any Supplier Background IPR or third party IPR in any Deliverable in such a way to prevent its use and failure to seek prior approval gives the Customer the right and freedom to use all Deliverables.
- 13.4 The Supplier agrees to transfer to the Customer all rights in the Project Specific IPRs including, but not limited to, any documents, tools, artefacts and any other such material created by the Supplier specifically for the purposes of this Call-Off Agreement.
- 13.5 The Supplier will not have any right to the Intellectual Property Rights of the Customer or its licensors, including:
- the Customer Background IPRs;
 - the Project-Specific IPRs;
 - IPRs in the Customer's Data.

14. Data Protection and Disclosure

- 14.1 The Supplier shall comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Framework Agreement or under this Call-Off Contract.
- 14.2 Where the Supplier is processing Buyer Data or Other Contracting Bodies' Personal Data, the Supplier shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the Authority and Other Contracting Bodies' Personal Data (and to guard against unauthorised or unlawful processing or accidental loss, destruction of or damage to the Buyer Data and the Other Contracting Bodies' Personal Data.
- 14.3 The Supplier shall provide the Buyer and/or Other Contracting Body with such information as the Buyer and/or Other Contracting Body may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA including;
- to promptly notify the Buyer and/or Other Contracting Body of any breach of the security measures to be put in place pursuant to this Clause; and
 - to ensure that it does not knowingly or negligently do or omit to do anything which places the Buyer and/or Other Contracting Body in breach of its obligations under the DPA and
 - not to cause or permit to be processed, stored, accessed or otherwise transferred outside the European Economic Area any Buyer Data or Other Contracting Body Personal Data supplied to it by the Buyer or Other Contracting Body without approval.

15. Buyer Data

- 15.1 The Supplier will not remove any proprietary notices relating to the Buyer Data.
- 15.2 The Supplier will not store or use Buyer Data except where necessary to fulfill its obligations.
- 15.3 If Buyer Data is processed by the Supplier, the Supplier will supply the data to the Buyer as requested and in the format specified by the Buyer.
- 15.4 The Supplier will preserve the integrity of Buyer Data processed by the Supplier and prevent its corruption and loss.
- 15.5 The Supplier will ensure that any system which holds any Buyer Data complies with the security requirements prescribed by the Buyer.
- 15.6 The Supplier will ensure that any system on which the Supplier holds any protectively marked Buyer Data will be accredited as specific to the Buyer and will comply with:
- the government security policy framework and information assurance policy;

- guidance issued by the Centre for Protection of National Infrastructure on Risk Management and Accreditation of Information Systems; and
- the relevant government information assurance standard(s).

- 15.7 Where the duration of this Call-Off Contract exceeds one year, the Supplier will review the accreditation status at least once a year to assess whether material changes have occurred which could alter the original accreditation decision in relation to Buyer Data. If any changes have occurred then the Supplier will re-submit such system for accreditation.
- 15.8 If at any time 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 where such corruption, loss, breach or degradation of the Buyer Data was caused by the action or omission of the Supplier or its representatives) comply with any remedial action proposed by the Buyer.
- 15.9 The Supplier will provide at the request of CCS or the Buyer, any information relating to the Supplier's compliance with its obligations under the Data Protection Act (to the extent arising under and/or in connection with the Framework Agreement and this Call-Off Contract). The Supplier will also ensure that it does not knowingly or negligently fail to do something that places CCS or any Buyer in breach of its obligations of the Data Protection Act. This is an absolute obligation and is not qualified by any other provision of this Call-Off Contract.
- 15.10 The Supplier agrees to use the appropriate organisational, operational and technological processes and procedures to keep the Buyer Data safe from unauthorised use or access, loss, destruction, theft or disclosure.
- 15.11 The provisions of this Clause 15 shall apply during the term of this Call-Off Contract and for such time as the Supplier holds the Buyer's Data.

16. Records and audit access

- 16.1 The Supplier will allow CCS (and CCS's external auditor) to access its information and conduct audits of the Services provided under this Call-Off Contract and the provision of Management Information (subject to reasonable and appropriate confidentiality undertakings).

17. Freedom of Information (FOI) requests

- 17.1 The Supplier will transfer any Request for Information to the Buyer within 2 UK working days of receipt.
- 17.2 The Supplier will provide all necessary help reasonably requested by the Buyer to enable the Buyer to respond to the Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act or Regulation 5 of the Environmental Information Regulations.
- 17.3 To the extent it is permissible and reasonably practical for it to do so, CCS will make reasonable efforts to notify the Supplier when it receives a relevant

FOIA or EIR request so that the Supplier may make appropriate representations.

18. Standards and quality

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

19. Security

- 19.1 The Supplier will use software and the most up-to-date antivirus definitions available from an industry accepted antivirus software vendor to minimise the impact of Malicious Software.
- 19.2 If Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, the Supplier will help the Buyer to mitigate any losses and will restore the Services to their desired operating efficiency as soon as possible.
- 19.3 Any costs arising from the actions of the Buyer or Supplier taken in compliance with the provisions of the above clause, will be dealt with by the Buyer and the Supplier as follows:
- by the Supplier, where the Malicious Software originates from the Supplier software or the Buyer Data while the Buyer Data was under the control of the Supplier, unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier.
 - by the Buyer if the Malicious Software originates from the Buyer software or the Buyer Data, while the Buyer Data was under the control of the Buyer.
- 19.4 The Supplier will immediately notify CCS of any breach of security in relation to CCS's Confidential Information (and the Buyer in relation to any breach regarding Buyer Confidential Information). The Supplier will recover such CCS and Buyer Confidential Information however it may be recorded.
- 19.5 Any system development by the Supplier must also comply with the government's '10 Steps to Cyber Security' guidance, available at: <https://www.gov.uk/government/publications/cyber-risk-management-a-board-level-responsibility/10-steps-summary>

20. Guarantee

- 20.1 Where the Buyer has specified in the Order Form that this Call-Off Contract shall be conditional upon receipt of a Guarantee from the guarantor, the Supplier shall deliver to the Buyer a completed Guarantee in the form attached, on or prior to the Commencement Date; and deliver to the Buyer a certified copy of the passed resolution and/or board minutes of its guarantor approving the execution of the Guarantee.

21. Incorporation of terms

- 21.1 Upon the execution of an Order, the terms and conditions agreed in the Order Form will be incorporated into this Call-Off Contract.

22. Managing disputes

- 22.1 When either Party notifies the other of a dispute, both Parties will attempt in good faith to negotiate a settlement as soon as possible.
- 22.2 Nothing in this procedure will prevent a Party from seeking any interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 22.3 If the dispute cannot be resolved, either Party will be entitled to refer it to mediation in accordance with the procedures below, unless:
- the Buyer considers that the dispute is not suitable for resolution by mediation,
 - the Supplier does not agree to mediation.
- 22.4 The procedure for mediation is as follows:
- A neutral adviser or mediator will be chosen by agreement between the Parties. If the Parties cannot agree on a mediator within 10 UK working days after a request by one Party to the other, either Party will as soon as possible, apply to the mediation provider or to the Centre for Effective Dispute Resolution (CEDR) to appoint a mediator. This application to CEDR must take place within 12 UK working days from the date of the proposal to appoint a mediator, or within 3 UK working days of notice from the mediator to either Party that they are unable or unwilling to act.
 - The Parties will meet with the mediator within 10 UK working days of the mediator's appointment to agree a programme for the exchange of all relevant information and the structure for negotiations to be held. The Parties may at any stage seek help from the mediation provider specified in this clause to provide guidance on a suitable procedure.
 - Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - If the Parties reach agreement on the resolution of the dispute, the agreement will be reduced to writing and will be binding on the Parties once it is signed by their duly authorised representatives.
 - Failing agreement, either Party may invite the mediator to provide a non-binding but informative opinion in writing. Such an opinion will be provided without prejudice and will not be used in evidence in any proceedings relating to this Call-Off Contract without the prior written consent of both Parties.
 - If the Parties fail to reach agreement in the structured negotiations within 60 UK working days of the mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

- 22.5 Either Party may request by written notice that the dispute is referred to expert determination if the dispute relates to:
- any technical aspect of the delivery of the digital services;
 - the underlying technology; or
 - otherwise is of a financial or technical nature.
- 22.6 An expert will be appointed by written agreement between the Parties, but if there is a failure to agree within 10 UK working days, or if the person appointed is unable or unwilling to act, the expert will be appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society).
- 22.7 The expert will act on the following basis:
- they will act as an expert and not as an arbitrator and will act fairly and impartially;
 - the expert's determination will (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
 - the expert will decide the procedure to be followed in the determination and will be requested to make their determination within 30 UK working days of their appointment or as soon as reasonably practicable and the Parties will help and provide the documentation that the expert needs for the determination;
 - any amount payable by one Party to another as a result of the expert's determination will be due and payable within 20 UK working days of the expert's determination being notified to the Parties
 - the process will be conducted in private and will be confidential;
 - the expert will determine how and by whom the costs of the determination, including their fees and expenses, are to be paid.
- 22.8 Without prejudice to any other rights of the Buyer under this Call-Off Contract, the obligations of the Parties under this Call-Off Contract will not be suspended, ceased or delayed by the reference of a dispute submitted to mediation or expert determination and the Supplier and the Supplier Staff will comply fully with the Requirements of this Call-Off Contract at all times.

23. Termination

- 23.1 The Buyer will have the right to terminate this Call-Off Contract at any time by giving the notice to the Supplier specified in Part A, the Order Form. The Supplier's obligation to provide the Services will end on the date set out in the Buyer's notice.
- 23.2 The Parties acknowledge and agree that:
- the Buyer's right to terminate under this clause is reasonable in view of the subject matter of this Call-Off Contract and the nature of the Service being provided.
 - the Call-Off Contract Charges paid during the notice period given by the Buyer in accordance with this clause are a reasonable form of compensation and are deemed to fully cover any avoidable costs or losses incurred by the Supplier which may arise either directly or indirectly as a result of the Buyer exercising the right to terminate under this clause without cause.

- Subject to clause 31 (Liability), if the Buyer terminates this Call-Off Contract without cause, they 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 such Loss. If the Supplier holds insurance, the Supplier will reduce its unavoidable costs by any insurance sums available. The Supplier will submit a fully itemised and costed list of such Loss, with supporting evidence of unavoidable Losses incurred by the Supplier as a result of termination.
- Either Party will have the right to terminate this Call-Off Contract where clause 29.2 applies.

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

- the Supplier commits a Supplier Default and if the Supplier Default cannot, in the reasonable opinion of the Buyer, be remedied, or
- the Supplier commits any fraud.

23.4 Either Party may terminate this Call-Off Contract at any time with immediate effect by written notice (of not more than 30 UK working days) if the other Party commits a Material Breach of any term of this Call-Off Contract (other than failure to pay any amounts due under this Call-Off Contract) and, if such breach is remediable, fails to remedy that breach within a period of 15 UK working days of being notified in writing to do so.

23.5 If an Insolvency Event of either Party occurs, or the other Party ceases or threatens to cease to carry on the whole or any material part of its business, the other Party is entitled to terminate this Call-Off Contract with immediate effect.

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

24. Consequences of termination and expiry

24.1 Where the Buyer has the right to terminate this Call-Off Contract it may elect to suspend this Call-Off Contract and its performance.

24.2 If the Buyer contracts with another Supplier for the Deliverables under this Call-Off Contract, the Supplier will comply with clause 28.

24.3 The rights and obligations of the Parties in respect of this Call-Off Contract will automatically terminate upon the expiry or termination of this Call-Off Contract, except those rights and obligations set out in clause 24.7.

24.4 At the end of the Call-Off Contract period (howsoever arising), the Supplier must:

- promptly return to the Buyer:

- all Buyer Data including all copies of Buyer software, code and any other software licensed by the Buyer to the Supplier under this Call-Off Contract;
- any materials created by the Supplier under this Call-Off Contract where the IPRs are owned by the Buyer;
- cease to use the Buyer Data and, at the direction of the Buyer, provide the Buyer and the replacement Supplier with a complete and uncorrupted version of the Buyer Data in electronic form in the formats and on media agreed with the Buyer and the replacement Supplier;
- destroy all copies of the Buyer Data when they receive the Buyer's written instructions to do so or 12 months after the date of expiry or termination, and provide written confirmation to the Buyer that the data has been securely destroyed, except where the retention of Buyer Data is required by Law;
- work with the Buyer on any work in progress and ensure an orderly transition of the Services to the replacement supplier;
- return any sums prepaid for Services which have not been delivered to the Buyer by the date of expiry or termination;
- provide all information requested by the Buyer on the provision of the Services so that:
 - the Buyer is able to understand how the Services have been provided; and
 - the Buyer and the replacement supplier can conduct due diligence.

24.5 Each Party will return all of the other Party's Confidential Information. Each Party will confirm that it does not retain the other Party's Confidential Information except where the information must be retained by the Party as a legal requirement or where this Call-Off Contract states otherwise.

24.6 All licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Services will be terminated at the end of the Call-Off Contract period (howsoever arising) without the need for the Buyer to serve notice except where this Call-Off Contract states otherwise.

24.7 Termination or expiry of this Call-Off Contract will not affect:

- any rights, remedies or obligations accrued under this Call-Off Contract prior to termination or expiration;
- the right of either Party to recover any amount outstanding at the time of such termination or expiry;
- the continuing rights, remedies or obligations of the Buyer or the Supplier under clauses:
 - 8 - Payment Terms and VAT
 - 9 - Recovery of Sums Due and Right of Set-Off
 - 10 - Insurance
 - 11 - Confidentiality
 - 12 - Conflict of Interest
 - 13 - Intellectual Property Rights
 - 15 - Buyer Data
 - 24 - Consequences of Expiry or Termination

- 31 - Liability
- 32 - Waiver and cumulative remedies
- any other provision of the Framework Agreement or this Call-Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry will survive the termination or expiry of this Call-Off Contract.

25. Supplier's status

25.1 The Supplier is an independent Contractor and no contract of employment or partnership is created between the Supplier and the Buyer. Neither Party is authorised to act in the name of, or on behalf of, the other Party.

26. Notices

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

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

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

26.3 The address and email address of each Party will be the address and email address in the Order Form.

27. Exit plan

27.1 The Supplier has provided details of their exit plan within the service description specified in the Order Form and the Buyer and Supplier will follow these arrangements as per Supplier Terms.

28. Handover to replacement supplier

28.1 Within 10 UK Working Days of the expiry or termination of this Call-Off Contract , the Supplier will make available to the Buyer:

- any data (including Buyer Data), Buyer Personal Data and Buyer Confidential Information in the Supplier's possession, power or control.
- any sums prepaid to the Supplier in respect of Ordered Deliverables not provided by the date of expiry or termination of this Call-Off Contract.

28.2 When requested, the Supplier will (at its own expense where the Call-Off Contract has been terminated before end of term due to Supplier cause) help the Buyer to migrate the Services to a replacement Supplier in line with the exit plan (clause 27) to ensure continuity of the Services.

29. Force Majeure

29.1 Neither Party will be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Call-Off Contract (other than a

payment of money) to the extent that such delay or failure is a result of a Force Majeure event. Each Party will use all reasonable endeavours to continue to perform its obligations under this Call-Off Contract for the length of a Force Majeure event.

- 29.2 If a Force Majeure event prevents a Party from performing its obligations under this Call-Off Contract for more than 15 consecutive calendar days, the other Party may terminate this Call-Off Contract with immediate effect by notice in writing.

30. Entire agreement

- 30.1 This Call-Off Contract constitutes the entire agreement between the Parties relating to the matters dealt within it. It supersedes any previous agreement between the Parties relating to such matters.
- 30.2 Each Party agrees that in entering into this Call-Off Contract it does not rely on, and will have no remedy relating to, any agreement or representation (whether negligently or innocently made) other than as expressly described in this Call-Off Contract.
- 30.3 Nothing in this clause will exclude any liability for (or remedy relating to) fraudulent misrepresentation or fraud.
- 30.4 Each of the Parties agrees that in entering into this Call-Off Contract it does not rely on, and will have no remedy relating to, any agreement, statement, representation, warranty, understanding or undertaking (whether negligently or innocently made) other than as described in this Call-Off Contract.

31. Liability

- 31.1 Neither Party excludes or limits its liability for:
- death or personal injury;
 - bribery or fraud by it or its employees;
 - breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982; or
 - any liability to the extent it cannot be excluded or limited by Law.
- 31.2 Subject to Clauses 31.1 and 31.10 and any lower limits specified in the Order Form, and notwithstanding Clause 31.4, each Party's total aggregate liability relating to all Losses due to a Default in connection with this Call-Off Contract::
- resulting in direct loss or damage to physical Property (including any technical infrastructure, assets or Equipment) of the other Party, will be limited to the sum of £1,000,000 in each Call-Off Contract year in which the Default occurs
 - subject to the first bullet point in this clause 31.2 which occur in the first 6 months, will be limited to the greater of the sum of £500,000 or a sum equal to 200% of the estimated Call-Off Contract Charges for the first six months
 - subject to the first bullet point in this clause 31.2 which occur during the remainder of the Call-Off Contract period, will be limited to the greater of the sum of £500,000 or an amount equal to 125% of the Call-Off Contract

- Charges paid, due or which would have been payable under this Call-Off Contract in the 6 months immediately preceding the event giving rise to the liability
- subject to the first bullet point in this clause 31.2 which occur after the end of the Call-Off Contract period, will be limited to the greater of the sum of £500,000 or an amount equal to 125% of the Call-Off Contract Charges paid, due or which would have been payable under this Call-Off Contract in the 6 months immediately before the end of the Call-Off Contract period.
- 31.3 Subject to clause 31.1, 31.4, in no event will either Party be liable to the other for any:
- loss of profits;
 - loss of business;
 - loss of revenue;
 - loss of or damage to goodwill;
 - loss of savings (whether anticipated or otherwise); or
 - any indirect, special or consequential loss or damage.
- 31.4 Subject to Clause 31.2 the Supplier will be liable for the following types of loss which will be regarded as direct and will be recoverable by the Buyer:
- the additional operational or administrative costs and expenses arising from any Supplier Default; and
 - any wasted expenditure or charges rendered unnecessary and/or incurred by the Buyer arising from the Supplier's Default; and
 - any losses, costs, damages, expenses or other liabilities suffered or incurred by the Buyer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Buyer Data by the Supplier; and
 - any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Law.
- 31.5 The annual aggregate liability for all defaults resulting in direct loss, destruction, corruption, degradation or damage to the Buyer Data or the Buyer Personal Data or any copy of such Buyer Data, caused by the Supplier's default under or in connection with a Call-Off Contract shall be subject to the financial limits set out in the Order Form.
- 31.6 No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by, or on behalf of, the Buyer to any document or information provided by the Supplier in its provision of the Services, and no failure of the Buyer to discern any defect in, or omission from, any such document or information will exclude or limit the obligation of the Supplier to carry out all the obligations of a professional Supplier employed in a client and Buyer relationship.
- 31.7 Unless otherwise expressly provided, the obligations of the Buyer under this Call-Off Contract are obligations of the Buyer in its capacity as a Contracting counterparty and nothing in this Call-Off Contract will be an obligation on, or in any other way constrain the Buyer in any other capacity, nor will the exercise by the Buyer of its duties and powers in any other capacity lead to any liability under this Call-Off Contract on the part of the Buyer to the Supplier.

- 31.8 Any liabilities which are unlimited will not be taken into account for the purposes of establishing whether any limits relating to direct loss or damage to physical Property within this clause have been reached.
- 31.9 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Buyer or by breach by the Buyer of its Call-Off Contract obligations.
- 31.10 The Supplier's liability to pay any Management Charges which are payable to the Authority shall not be limited.

32. Waiver and cumulative remedies

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

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

33. Fraud

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

33.2 If the Supplier commits any fraud relating to a Framework Agreement, this Call-Off Contract or any other Contract with the government:

- the Buyer may terminate the Call-Off Contract
- CCS may terminate the Framework Agreement
- CCS and/or the Buyer may recover in full from the Supplier whether under Clause 33.3 below or by any other remedy available in law.

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

34. Prevention of bribery and corruption

34.1 The Supplier will not commit any Prohibited Act.

34.2 The Buyer and CCS will be entitled to recover in full from the Supplier and the Supplier will, on demand, compensate CCS and/or the Buyer in full from and against:

- the amount of value of any such gift, consideration or commission; and
- any other loss sustained by CCS and/or the Buyer in consequence of any breach of this clause.

35. Legislative change

35.1 The Supplier will neither be relieved of its obligations under this Call-Off Contract nor be entitled to increase the Call-Off Contract prices as the result of a general change in Law or a Specific Change in Law without prior written approval from the Buyer.

36. Publicity, branding, media and official enquiries

36.1 The Supplier will take all reasonable steps to not do anything which may damage the public reputation of the Buyer. The Buyer may terminate this Call-Off Contract for Material Breach where the Supplier, by any act or omission, causes material adverse publicity relating to or affecting the Buyer or the Call-Off Contract. This is true whether or not the act or omission in question was done in connection with the performance by the Supplier of its obligations hereunder.

37. Non Discrimination

37.1 The Supplier will notify CCS and relevant Buyers immediately of any legal proceedings issued against it by any Supplier Staff on the grounds of discrimination.

38. Premises

38.1 Where either Party uses the other Party's premises, such Party is liable for all Loss or damage it causes to the premises. Such Party is responsible for repairing any damage to the premises or any objects on the premises, other than fair wear and tear.

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

38.3 The Supplier will vacate the Buyer's premises upon termination or expiry of the Call-Off Contract.

38.4 This clause does not create an tenancy or exclusive right of occupation.

38.5 While on the Buyer's premises, the Supplier will:

- ensure the security of the premises;
- comply with Buyer requirements for the conduct of personnel;
- comply with any health and safety measures implemented by the Buyer;
- comply with any instructions from the Buyer on any necessary associated safety measures ; and
- notify the Buyer immediately in the event of any incident occurring on the premises where that incident causes any personal injury or damage to Property which could give rise to personal injury.

38.6 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.

38.7 All Equipment brought onto the Buyer's premises will be at the Supplier's risk. Upon termination or expiry of the Call-Off Contract, the Supplier will remove such Equipment.

39. Equipment

39.1 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.

39.2 Upon termination or expiry of the Call-Off Contract, the Supplier will remove the Equipment, and any other materials, leaving the premises in a safe and clean condition.

40. The Contracts (Rights of Third Parties) Act 1999

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

41. Law and jurisdiction

41.1 This Call-Off Contract will be governed by the Laws of England and Wales. Each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales and for all disputes to be conducted within England and Wales.

42. Environmental requirements

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

42.2 The Supplier must support Buyers in their efforts to work in an environmentally-friendly way, eg by helping them engage in practices like recycling or lowering their carbon footprint.

43. Defined Terms

In this Call-Off Contract, the following expressions and defined terms have the following interpreted meaning:

'Additional Services'	The services in addition to the G-Cloud Services which are within the scope of the Framework Agreement which the Buyer may request from time to time.
'Application'	The response submitted by the Supplier to the Invitation to Tender (ITT).
'Assurance'	The verification process undertaken by CCS as described in this Framework Agreement.
'Background IPRs'	For each Party: ● IPRs owned by that Party before the date of this Call-Out Contract, including IPRs contained in any of the Party's know-how, documentation, processes and procedures, ● IPRs created by the Party independently of this Call-Out Contract, and/or ● For the Buyer, Crown Copyright which is not available to the Supplier otherwise than under this Call-Out Contract, but excluding IPRs owned by that Party subsisting in Buyer

	software or Supplier software.
'Buyer'	A UK public sector body, or Contracting Body, as described in the OJEU Contract Notice, that can execute a competition and a Call-Off Contract within this Framework Agreement and is identified in the Call-Off Order Form.
'Buyer's Confidential Information'	All Buyer Data and any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and Suppliers of the Buyer, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above Any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential').
'Buyer Data'	Data that is owned or managed by the Buyers.
'Buyer Software'	Software owned by or licensed to the Buyer (other than under or pursuant to this Agreement), which is or will be used by the Supplier for the purposes of providing the Services.
'Call-Off Contract'	The legally binding agreement (entered into following the provisions of this Framework Agreement) for the provision of Services made between a Buyer and the Supplier. This may include the Order Form detailing service requirements, term of Call-Off Order, start date and pricing.
'Charges'	The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under the Call-Off Contract.
'PSN Code of Practice'	Those obligations and requirements for PSN Service Providers wanting to participate in the PSN together with all documents annexed to it and referenced within it, as set out in the code template.
'Collaboration Agreement'	An agreement 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 an efficient end-to-end G-Cloud Services.
'Commencement Date'	For the purposes of the Framework Agreement, commencement date shall be as outlined in Section 1 - The Appointment within this Framework Agreement. For the purposes of the Call-Off Contract, commencement date shall be as set in the Order Form.
'Commercially Sensitive Information'	Information, which CCS has been notified about, (before the start date of the Framework Agreement) or the Buyer (before the Call-Off Contract start date) with full details of why the Information is deemed to be commercially sensitive.
'Comparable Supply'	The supply of services to another Buyer of the Supplier that are the same or similar to any of the Services
'Confidential Information'	CCS's Confidential Information or the Supplier's Confidential Information, which may include (but is not limited to): ● any information that relates to the 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 any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential')
'Contracting Bodies'	The Buyer and any other person as listed in the OJEU Notice or Regulation 2 of the Public Contracts Regulations 2015, as amended from time to time, including CCS
'Control'	Control as defined in section 1124 and 450 of the Corporation Tax Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly
'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 government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf
'Data Protection Legislation or DPA'	The Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable legally binding guidance and codes of practice issued by the Information Commissioner.
'Data Subject'	Shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time.
'Default'	- any breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term) - any other default, act, omission, negligence or negligent statement of the Supplier, of its Subcontractors or any Supplier Staff in connection with or in relation to this Framework Agreement or this Call-Off Contract Unless otherwise specified in this Call-Off Contract 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'	Those G-Cloud Services which the Buyer contracts the Supplier to provide under the Call Off Contract.
'Digital Marketplace'	The government marketplace where Services will be made available to Buyers to enable them to be bought

	(https://www.digitalmarketplace.service.gov.uk/)
'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 the Call-Off Contract.
'Direct Award Criteria'	The award criteria to be applied for the award of Call-Off Contracts for G-Cloud Services set out in Section 3 'Buying Process'.
'Direct Ordering Procedure'	The ordering procedure set out in Framework Agreement.
'Effective Date'	The date on which the Call-Off Contract is signed and as set out in the Order Form.
'FoIA'	The Freedom of Information Act 2000 and any subordinate legislation made under the Act occasionally together with any guidance or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation.
'Framework Agreement'	The contractually-binding framework agreement between the Crown Commercial Service and the Supplier, reference number: RM1557viii, referred to in the Order Form.
'Framework Suppliers'	The suppliers (including the Supplier) appointed under this G-Cloud 8 Framework Agreement.
'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 Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown.
'G-Cloud Services'	The cloud services described in Framework Section 2 (G-Cloud Services) as defined by the Service Definition, the Supplier Terms and any related tender documentation, which the Supplier shall make available to the Authority and Other Contracting Bodies and those services which are deliverable by the Supplier under the Collaboration Agreement.
'Good Industry Practice'	Standards and procedures conforming to the Law and the application of skill, care and foresight which would be expected from a person or body who has previously been engaged in a similar type of undertaking under similar circumstances. The person or body must adhere to the technology code of practice (https://www.gov.uk/service-manual/technology/code-of-practice.html) and the government service design manual (https://www.gov.uk/service-manual).
'Group'	A company plus any subsidiary or Holding Company.

	'Holding company' and 'Subsidiary' are defined in section 1159 of the Companies Act 2006.
'Group of Economic Operator'	A partnership or consortium not (yet) operating through a separate legal entity.
'Guarantee'	The deed of guarantee described in the Order Form (Parent Company Guarantee).
'Guidance'	Any current UK Government Guidance on the Public Contracts Regulations. In the event of a conflict between any current UK Government Guidance and the Crown Commercial Service Guidance, current UK Government Guidance shall take precedence.
'Holding Company'	As described in section 1159 and Schedule 6 of the Companies Act 2006.
'Information'	As described under section 84 of the Freedom of Information Act 2000, as amended from time to time.
'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'	means: a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), know-how, trade secrets and moral rights and other similar rights or obligations whether registerable or not; b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off.
'Invitation to Tender or ITT'	The invitation to tender for this Framework.
'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, judgment of a relevant court of Law, or directives or requirements of any Regulatory Body.

'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'	A subdivision of the Services which are the subject of this procurement as described in the OJEU Contract Notice.
'Management Charge'	The sum paid by the Supplier to CCS being an amount of up to 1% but currently set at 0.5% 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 termination of any Call-Off Contract.
'Management Information'	The management information (MI) specified in section 6 (What you report to CCS) of the Framework Agreement.
'Management Information (MI) Failure'	If any of the below instances occur, CCS may treat this as an 'MI Failure': ● there are omissions or errors in the Supplier's submission ● the Supplier uses the wrong template ● the Supplier's report is late ● the Supplier fails to submit a report
'Material Breach (Framework Agreement)'	A breach by the Supplier of the following Clauses in this Framework Agreement: ● Subcontracting ● Non-Discrimination ● Conflicts of Interest and Ethical Walls ● Warranties and Representations ● Provision of Management Information ● Management Charge ● Prevention of Bribery and Corruption ● Safeguarding against Fraud ● Data Protection and Disclosure ● Intellectual Property Rights and Indemnity ● Confidentiality ● Official Secrets Act ● Audit
'Material Breach (Call-Off Contract)'	A single serious breach of or persistent failure to perform as required in the Call-Off Contract.
'OJEU Contract Notice'	The advertisement for this procurement issued in the Official Journal of the European Union.
'Order Form'	An order set out in the Call-Off Contract for G-Cloud Services placed by a Buyer with the Supplier.
'Other Contracting Bodies'	All Contracting Bodies, or Buyers, except CCS.
'Parent Company'	Any company which is the ultimate Holding Company of the Supplier.
'Party'	● for the purposes of the Framework Agreement, CCS or the Supplier

	for the purposes of the Call-Off Contract, the Supplier or the Buyer and 'Parties' will be interpreted accordingly.
'Personal Data'	As described in the Data Protection Act 1998 (http://www.legislation.gov.uk/ukpga/1998/29/contents)
'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
'PSN'	The Public Services Network (PSN) is the Government's high-performance network which helps public sector organisations work together, reduce duplication and share resources.
'Regulations'	The Public Contracts Regulations 2015 (at http://www.legislation.gov.uk/uksi/2015/102/contents/made) and the Public Contracts (Scotland) Regulations 2012 (at http://www.legislation.gov.uk/ssi/2012/88/made).
'Regulatory 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 Framework Agreement.
'Reporting Date'	The seventh day of each month following the month to which the relevant MI relates. A different date can be chosen if agreed between the Parties.
'Request for Information'	A request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
'Self Audit Certificate'	The certificate in the form as set out in Framework Schedule 1 - Self Audit Certificate, to be provided to CCS by the Supplier.
'Services'	Means G-Cloud Services and any/or Additional Services.
'Service Definition'	The definition of the Supplier's G-Cloud Services provided as part of their Tender that includes, but is not limited to, those items listed in Section 2 (G-Cloud Services) of this Framework Agreement.
'Service Description'	The description of the Supplier service offering as published on the Digital Marketplace.
'Standstill Period'	The term Standstill Period is set out in Regulation 87 (2). In summary, it is the 10 calendar days after CCS (in this instance by electronic means) sends its decision to conclude the Framework Agreement tendered via the Official Journal of the European Union, during which CCS must not conclude the

	Framework Agreement with the successful Supplier(s). Unsuccessful Applicants can raise any questions with CCS that relate to the decision to award before the Framework Agreement is concluded. CCS cannot advise unsuccessful Applicants on the steps they should take. Applicants should always seek independent legal advice, where appropriate.
'Specific Change in Law'	A change in the Law that relates specifically to the business of CCS and which would not affect a Comparable Supply.
'Subcontractor'	Each of the Supplier's Subcontractors or any person engaged by the Supplier in connection with the provision of the digital services as may be permitted by this Framework Agreement.
'Supplier'	A Supplier of G-Cloud Services who can bid for Call-Off Contracts as outlined in the Contract Notice within the Official Journal of the European Union (OJEU Contract Notice).
'Supplier Background IPRs'	Background IPRs of the Supplier.
'Supplier Insolvency Event'	Means the Supplier is unable to pay debts in Section 268 of Insolvency Act 1986.
'Supplier Staff'	All persons employed by the Supplier including the Supplier's agents and consultants used in the performance of its obligations under this Framework Agreement or any Call-Off Contracts.
'Supplier Terms'	means the terms and conditions pertaining to the G-Cloud Services and as set out in the Terms and Conditions document supplied as part of the Supplier's Tender.
'Tender'	The response submitted by the Supplier to the Invitation to Tender.
'Working Day'	Any day other than a Saturday, Sunday or public holiday in England and Wales , from 9am to 5pm unless otherwise agreed with the Buyer and the Supplier in the Call-Off Contract.

Annex A - Deed of guarantee – Not used

Annex B - Alternative Clauses – Not used

Annex C – Arcus Terms & Conditions

Arcus Global – General Terms

1 Definitions and interpretation

1.1 In this Agreement the following words and phrases shall have the following meanings:

1.1.1 **“Access Requirements”** means the access requirements set out in the Order Form;

1.1.2 **“Agreement”** has means a contract between the Client and Arcus Global on the terms of the Order Form, the Arcus Global Terms (as set out in clause 2.1 below) and (where applicable) the Framework Terms;

1.1.3 **“Arcus Global Product”** means the Arcus Global software set out in the Order Form;

1.1.4 **“Arcus Global Terms”** means these Arcus Global General Terms and (where applicable under the Order Form) the attached Professional Services Terms, Products Terms, Resale Terms and Support Terms;

1.1.5 **“Charges”** means the Professional Services Charges, Product Charges and Support Charges (as applicable);

1.1.6 **“Claim”** means a claim brought against the Client that the normal use or possession of the Products or the Documentation in accordance with this Agreement infringes a third party's copyright;

1.1.7 **“Client Data”** means all data held in the Product and belonging to the Client and/or its licensors;

1.1.8 **“Client Failure”** means a breach by the Client of any Client Responsibilities;

1.1.9 **“Client Responsibilities”** means the responsibilities of the Client set out in this Agreement;

1.1.10 **“Confidential Information”** means any information which is designated by the party disclosing it to be confidential (including, in respect of Arcus Global, the Products and the Documentation);

1.1.11 **“Contract Year”** means each period of 12 months starting on the date of this Agreement or an anniversary of the date of this Agreement;

1.1.12 **“Data Tools”** means tools, processes and applications including reporting tools, business intelligence applications, machine learning models, data discovery and ETL processes, and predictive analytics;

1.1.13 **“Deliverable”** means a deliverable provided by Arcus Global under this Agreement, including the deliverables set out in the Order Form;

1.1.14 **“DPA”** means the Data Protection Act 1998;

1.1.15 **“Documentation”** means any instruction manuals and other information associated with the Products which may be provided by Arcus Global to the Client, whether in electronic form or otherwise;

1.1.16 **“Framework Terms”** means the terms of G-Cloud or any other framework agreement to which Arcus Global has agreed in writing, where the Client purchases Products and/or Services from Arcus Global under the terms of the framework;

1.1.17 **“Licence Restrictions”** means the licence restrictions for a Product set out in the Order Form;

1.1.18 **“Order Form”** means an order form executed by Arcus Global and the Client;

1.1.19 **“Personal Data”** means personal data (as defined in the DPA) processed by Arcus Global on behalf of the Client under this Agreement;

1.1.20 **“Product”** means a Arcus Global Product and/or Third Party Product as appropriate;

1.1.21 **“Product Charges”** means the charges for the Products set out in the Order Form;

1.1.22 **“Professional Services”** means the professional services set out in the Order Form;

1.1.23 **“Professional Services Charges”** means the charges for the Professional Services set out in the Order Form;

1.1.24 **“Renewal Period”** has the meaning in respect of each Product set out in the Order Form;

1.1.25 **“Services”** means the services provided by Arcus Global under this Agreement, including (where applicable) the provision of access to the Products and/or the Third Party Products, the Professional Services and/or the Support Services;

1.1.26 **“Support Services”** means the support services set out in the Order Form;

1.1.27 **“Third Party Product”** means the third party software set out in the Order Form;

1.1.28 **“User”** means an employee of the Client who is permitted to use the Products;

1.1.29 **“Warranty Period”** means a period of 90 days commencing on the earlier of (i) the date that the Product is first delivered to the Client; and (ii) the date that the Client first accesses or uses the Product; and

1.1.30 **“Working Days”** means Monday to Friday excluding bank and public holidays in the UK;

1.2 In this Agreement:

1.2.1 a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time;

1.2.2 the words “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;

1.2.3 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

1.2.4 references to this Agreement are references to this Agreement as amended from time to time.

2 Status

2.1 Each Order Form constitutes a separate contract subject to the Arcus Global Terms.

2.2 This Agreement will become binding on Arcus Global only from the date that the Order Form is signed by an authorised representative of Arcus Global.

2.3 The terms of this Agreement will apply notwithstanding any terms attached to any purchase order or otherwise provided to Arcus Global by the Client.

2.4 If there is any conflict between the Order Form, the Arcus Global Terms and/or the Framework Terms, the Order Form will take precedence

over the Arcus Global Terms and the Arcus Global Terms will take precedence over the Framework Terms (to the extent permitted under the Framework Terms).

3 Client Responsibilities

- 3.1 The Client shall comply with the Client Responsibilities.
- 3.2 If there is a Client Failure then without prejudice to any of Arcus Global's other rights and remedies it:
 - 3.2.1 shall be granted an extension of time in respect of any timeframes agreed by the parties based on the period of delay caused by the Client Failure;
 - 3.2.2 shall not be deemed to be in breach of this Agreement where the Client Failure causes Arcus Global to breach this Agreement; and
 - 3.2.3 may charge the Client for any additional costs or expenses it incurs as a result of the Client Failure.
- 3.3 Arcus Global may, on reasonable notice, visit any premises in which the Client is using or accessing the Products to determine whether the use of the Products by the Client complies with this Agreement. The Client shall grant Arcus Global such access to its premises and to its IT equipment as is required to enable Arcus Global to verify that the Client is complying with this Agreement.

4 Payment and payment terms

- 4.1 Arcus Global will invoice the Client for Charges in accordance with the timeframes set out in the Order Form.
- 4.2 The Client shall pay Charges invoiced by Arcus Global in accordance with clause 4.1 above within 14 days of the date of the invoice.
- 4.3 If the Client does not pay any Charges within 14 days of the date of the invoice, Arcus Global may:
 - 4.3.1 suspend provision of all or any of the Services or the client's access to the Products; and/or
 - 4.3.2 charge interest at a daily rate on all sums outstanding until payment in full is received whether before or after judgment at a rate of 2% above the base lending rate of Barclay's Bank plc from time to time. Arcus Global reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.4 The Client shall be responsible for any applicable sales, use or value added taxes arising out of or in connection with this Agreement, other than UK corporation tax arising in respect of Arcus Global's income or profits. All payments due are expressed exclusive of UK Value Added Tax, which will be invoiced in addition where applicable.
- 4.5 The Client shall reimburse Arcus Global for any reasonable travel and out-of-pocket expenses it incurs in the course of providing the Services.
- 4.6 Arcus Global may increase the Charges from time to time. The revised Charges shall take effect in accordance with any timeframes notified to the Client by Arcus Global from time to time.

5 Warranties

- 5.1 Each party warrants that it has full capacity and authority to enter into and perform this Agreement.
 - 5.2 Arcus Global warrants that the Products will during the Warranty Period under normal use conform in all material respects with the functionality outlined in the Documentation. If the Client notifies Arcus Global in writing of any material failure of a Product so to conform during the Warranty Period, Arcus Global shall at its own expense and sole option either correct any demonstrable failure in the Products within a reasonable time or upon return of the Product (where applicable) and the related Documentation provide or authorise a refund of the relevant Product Charge to the Client. This shall be the Client's sole remedy against Arcus Global for any fault with the Products or failure of the Products to conform with the functionality outlined in the Documentation.
 - 5.3 Arcus Global warrants that it will provide the Services with reasonable skill and care and that the Services will be of a professional quality conforming to generally accepted computer service industry practices. The Client shall notify Arcus Global of any failure to comply with this warranty within 90 days of the provision of the relevant Services. The Client's sole remedy against Arcus Global for any such failure shall be to require Arcus Global to correct such failure free of additional charge and within a reasonable time.
 - 5.4 Except as expressly set out in this Agreement, all conditions, warranties, terms and undertakings, express or implied, whether by statute, common law, trade practice, custom, course of dealing or otherwise (including about quality, performance or fitness or suitability for purpose) in respect of the Products, the Documentation and the Services are excluded to the fullest extent permissible by law.
- ### **6 Intellectual Property Rights**
- 6.1 Arcus Global owns, or is licensed to use, all copyright and other intellectual property rights in the Products and the Documentation.
 - 6.2 Arcus Global will own any Intellectual Property Rights it creates in the course of providing the Services (including any Intellectual Property Rights in Deliverables). Any modifications or customisations to Arcus Global Products made in the course of the Services will be licensed to the Client on the relevant Arcus Global Product Terms.
 - 6.3 Save as expressly set out in this Agreement, the Client does not acquire any rights in the Products or Services.
 - 6.4 Arcus Global warrants that the use of the Products and the Documentation in accordance with this Agreement will not infringe any third party's copyright.
 - 6.5 Subject to clauses 6.6 and 6.7, if there is a Claim, Arcus Global shall indemnify the Client against any damages that are awarded to be paid to such third party in respect of such Claim provided that the Client:

- 6.5.1 notifies Arcus Global of the Claim in writing as soon as reasonably practicable and in any event within 30 days of becoming aware of the Claim;
- 6.5.2 does not make any admission of liability or compromise or agree any settlement of the Claim without Arcus Global's prior written consent and does not otherwise prejudice the defence of the Claim;
- 6.5.3 gives Arcus Global, or such person as Arcus Global directs, immediate and complete control of the conduct or settlement of all negotiations and litigation arising from the Claim; and
- 6.5.4 on payment of its reasonable costs, gives Arcus Global, and other third parties as Arcus Global directs, all assistance reasonably required with the conduct or settlement of any such negotiations or litigation.
- 6.6 Arcus Global shall have no liability for any claim of infringement based on the use of a superseded or altered release of a Product if the infringement would have been avoided by the use of a current unaltered release of the Product which Arcus Global provides to the Client.
- 6.7 If a Claim is brought, Arcus Global shall have the right in its absolute discretion and at its own expense:
 - 6.7.1 to procure the right for the Client to continue using the Products and/or the Documentation in accordance with the terms of this Agreement;
 - 6.7.2 to make such alterations, modifications or adjustments to the Products and/or the Documentation so that they become non infringing; or
 - 6.7.3 to replace the Products and/or the Documentation with non-infringing software and/or documentation.
- 6.8 If Arcus Global is unable to resolve a Claim by taking one of the actions under clause 6.7 Arcus Global may terminate this Agreement upon repayment to the Client of the relevant Product Charges (less a reasonable deduction, determined by Arcus Global, in respect of any use of the Product made by the Client). Any such payment such right shall be the Client's sole and exclusive remedy under this Agreement in respect of the Claim.
- 6.9 If there is any claim attributable to the use or possession by the Client of the Products and the Documentation other than in accordance with this Agreement, the provisions of clauses 6.4 to 6.8 shall not apply and Client shall indemnify Arcus Global against all liabilities, costs and expenses which Arcus Global incurs as a result of the claim.
- 7 Client Data**
 - 7.1 In the course of providing the Services, Arcus Global may use Data Tools that access and/or use the Client Data and the Client hereby agrees to this use.
 - 7.2 Arcus Global will own all right and title in and to the output of such use, including all related metadata and know-how ("**Output**").
 - 7.3 Arcus Global's use of the Data Tools pursuant to clause 7.1 above will not involve any access to and/or use of Personal Data and, accordingly, the Output will not contain any Personal Data.
 - 7.4 The Client Data will remain the property of the Client and/or its licensors and, save Arcus

Global's right to access and use the Client Data pursuant to clause 7.1 above, Arcus Global will not acquire any right in or title to the Client Data.

8 Limitation of liability

- 8.1 Nothing in this Agreement shall exclude or restrict the liability of either party to the other for death or personal injury resulting from the negligent act of one party or for liability for any fraudulent misrepresentation by either party.
- 8.2 Subject to clauses 8.1, and 8.3, the liability of Arcus Global to the Client for direct loss in contract, tort or otherwise arising out of or in connection with this Agreement, the Client's use of the Products or the Documentation and/or the Services shall be limited in aggregate during each Contract Year to the greater of £1,000 and the total Charges paid by the Client to Arcus Global during the relevant Contract Year.
- 8.3 Subject to clause 8.1, in no circumstances shall Arcus Global be liable to the Client in contract, tort, negligence, breach of statutory duty or otherwise in respect of any of the following arising out of or in connection with this Agreement or the Client's use of the Products or the Documentation or the Services:
 - 8.3.1 loss of profits, anticipated savings, revenue, goodwill or business opportunity;
 - 8.3.2 loss or corruption of or cost of restoration of data or for use of any results obtained by use of the Products;
 - 8.3.3 any indirect, consequential, financial or economic loss or damage, costs or expenses;
 - 8.3.4 loss of availability arising out of or in connection with the Products or Services or otherwise under, in connection with or in relation to this Agreement; or
 - 8.3.5 loss of access to the Products due to the failure by the Client to comply with the Access Requirements.
- 8.4 If any of the limitations on Arcus Global' liability under this Agreement are adjudged to be unreasonable in the circumstances, then such limitation shall be increased to the amount that Arcus Global can recover from its insurer for the loss in question.
- 8.5 The payments due under this Agreement have been negotiated and agreed on the basis that the parties may exclude or limit their liability to each other as set out in this Agreement. The parties each confirm that they will themselves bear or insure against any loss for which the other party has limited or excluded liability under this Agreement.

9 Term

- 9.1 This Agreement shall commence on the date of this Agreement and shall continue until the termination or expiry of this Agreement in respect of all Products and the termination or expiry of all the Services.

10 Termination

- 10.1 Either party may terminate this Agreement by giving written notice to the other if the other commits a material or persistent breach of any term of this Agreement and that breach (if capable of remedy) is not remedied within 30 days of written notice being given requiring it to be remedied (and where such breach is not capable of remedy, the relevant party shall be

	entitled to terminate the Agreement with immediate effect).	any trade secrets or Confidential Information relating to the other party. These restrictions will cease to apply to any such information that becomes available to the public generally other than through a breach of a duty of confidentiality owed to the other party. Neither party shall be restricted from disclosing the Confidential Information or any part of it pursuant to a judicial or other lawful government order, but only to the extent required by such order and subject to the party obliged to comply with such order giving the other party as much notice of the terms of the order as may be reasonably practicable.
10.2	This Agreement may be terminated by either party if an interim order is made, or a voluntary arrangement approved, or if a petition for bankruptcy order is presented or a bankruptcy order is made against the other party or if a receiver or trustee is appointed of the other party's estate or a voluntary arrangement is approved or a notice is served of intention to appoint an administrator or an administrator is appointed by Court order or by any other means, or a receiver or administrative receiver is appointed over any of the other party's assets or undertaking or a resolution or petition to wind up the other party is passed or presented (otherwise than for the purposes of reconstruction or amalgamation), or if any circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding up petition or make a winding up order or any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the above events.	
10.3	Upon termination or expiry of this Agreement all licences granted under this Agreement shall immediately terminate.	
10.4	Termination of this Agreement shall not relieve the Client of its obligation to pay any Charges that have accrued prior to termination.	
10.5	Any termination of this Agreement shall be without prejudice to any other rights or remedies either party may be entitled to under this Agreement or at law.	
10.6	Following termination of this Agreement (by either party for whatever reason) the Client shall:	
10.6.1	within seven days at Arcus Global's option, either return to Arcus Global or destroy all copies of the Products and Documentation in its possession and a duly authorised officer of the Client shall certify in writing to Arcus Global that the Client has complied with such obligation; and	
10.6.2	as soon as reasonably practical ensure that all data (including the Personal Data) is removed or deleted from the Products. If the Client does not remove or delete the data within 14 days, Arcus Global may remove or delete the data (and will have no liability for the loss of such data).	
11	<u>Confidentiality</u>	
11.1	Neither party shall during the term of this Agreement or for a period of five years after expiry or termination of this Agreement:	
11.1.1	divulge or communicate to any person, company, business entity or other organisation;	
11.1.2	use for its own purposes or for any purposes other than those of the other party; or	
11.1.3	through any failure to exercise due care and diligence, cause any unauthorised disclosure of	
11.2	Nothing in this clause 11 shall prevent:	
11.2.1	Arcus Global from disclosing the Products to any third party;	
11.2.2	the Client from disclosing the Products to the Users, provided that the Client remains responsible for the Users' compliance with the obligations of confidentiality set out in this Agreement; or	
11.2.3	Arcus Global from including the name of the Client in its publicity materials to reference the Client's use of the Products.	
11.3	Arcus Global acknowledges that the Client is a public authority for the purposes of the Freedom of Information Act 2000 and may be required to disclose information about this Agreement to enquirers in accordance with the provisions of that Act. The Client shall, where possible, notify Arcus Global in writing of any requests it receives for Confidential Information relating to Arcus Global and shall discuss with Arcus Global prior to the disclosure of such information any exemptions that may apply to such Confidential Information.	
12	<u>Data Protection</u>	
12.1	The Client is the data controller and Arcus Global is the data processor (each as defined in the DPA) in respect of any Personal Data.	
12.2	The Client, as data controller, is responsible for compliance with the DPA in respect of the Personal Data. The Client shall obtain all consents and provide all notices necessary to enable Arcus Global to receive and process the Personal Data for the purpose of providing the Services.	
12.3	Arcus Global will:	
12.3.1	process the Personal Data only on the instructions of the Client as set out in this Agreement; and	
12.3.2	put in place all reasonable technical and organisational security measures in respect of the Personal Data, as set out in this Agreement.	
13	<u>Bribery and corruption</u>	
13.1	The Client shall:	
13.1.1	comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including the Bribery Act 2010;	
13.1.2	have and maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with clause 13.1.1 above; and	
13.1.3	promptly report to Arcus Global any request or demand for any undue financial or other advantage of any kind received by the Client in	

connection with the performance of this Agreement.

14 General

- 14.1 The failure or delay of Arcus Global to exercise or enforce any right under this Agreement shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time.
- 14.2 Neither party shall be liable for any delay in or for failure to perform its obligations under this Agreement, other than an obligation to make any payment due to the other party, if that delay or failure is caused by circumstances beyond the control of that party including fires, strikes, insurrection, riots, embargoes, or regulations of any civil or military authority.
- 14.3 The Client shall not seek directly or through any third party to employ permanently or temporarily engage personnel who are supplying Services during the term of this Agreement or for six working months after termination or expiry of this Agreement. Any such approach shall result in payment by the Client of damages including loss of revenue and expertise. As an agreed pre-estimate of damages, this sum shall be 6 working months of the standard price applicable to the person(s) affected and payable upon presentation of its invoice by Arcus Global.
- 14.4 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes, cancels and replaces all prior agreements, licences, negotiations and discussions between the parties relating to it. The Client acknowledges that it has not been induced to enter into this Agreement by, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) not expressly incorporated into this Agreement. However, nothing in this Agreement will exclude either party's liability for any fraudulent statement or act.
- 14.5 No variation of this Agreement shall be valid unless it is in writing and signed by an authorised representative of each of the parties.
- 14.6 The Client shall not (without Arcus Global's prior written consent) assign this Agreement nor any of its rights or obligations under this Agreement nor sub-license the use of the Products or the Documentation. Arcus Global shall be entitled to assign this Agreement to another member of the Arcus Global group of companies and/or an assignee of Arcus Global's business. This Agreement shall be binding on any successors and assignees.
- 14.7 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement, and nothing in this Agreement shall confer or purport to confer on any third party any benefit or any right to enforce any term of this Agreement or operate to give any third party the right to enforce any term of this Agreement.
- 14.8 If any provision of this Agreement is held to be unlawful, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be severed from this Agreement and rendered ineffective as far as possible without modifying or affecting the legality, validity or enforceability of the

remaining provisions of this Agreement which will remain in full force and effect.

- 14.9 Any notice to be given under this Agreement shall be in writing and shall be delivered by hand, sent by first class post to the address of the other party set out in this Agreement (or such other address as may have been notified in the Order Form) or sent by email to the address notified in the Order Form or from time to time. Any such notice or other document shall be deemed to have been served: if delivered by hand - at the time of delivery; if sent by post - upon the expiration of 48 hours after posting; and if sent by email - immediately unless the sender receives notice from the recipient that the email has not been received.
- 14.10 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 14.11 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Arcus Global – Professional Services Terms

1 **Definitions**

- 1.1 In these Professional Services Terms:
- 1.1.1 “**Project Plan**” means any project plan set out in the Order Form.

2 **Professional Services**

- 2.1 Subject to clause 2.2 below, Arcus Global will provide the Professional Services to the Client.
- 2.2 Arcus Global will use reasonable endeavours to deliver any Deliverables to meet the Client's requirements as set out in the Order Form. However, owing to the nature of software development, Arcus Global cannot warrant that the Deliverables will meet the Client's requirements or that they will deliver a particular output or result.

3 **Project Plan**

- 3.1 Arcus Global will use reasonable endeavours to meet any delivery dates set out in a Project Plan (including in respect of the delivery of any Deliverables). Time is not of the essence in respect of any of Arcus Global's obligations relating to the Professional Services.

4 **Acceptance**

- 4.1 The Client shall be deemed to accept any Deliverables received from Arcus Global under this Agreement seven days after delivery.

5 **Client Responsibilities**

- 5.1 The Client shall provide all cooperation reasonably required by Arcus Global in the provision of the Professional Services, including access to information, staff, systems and locations.
- 5.2 The Client shall comply with any Client Responsibilities set out in the Order Form in respect of the Professional Services in accordance with any timeframes for such Client Responsibilities (including in any Project Plan).

6 **Payment**

- 6.1 The Client shall pay the Professional Services Charges in accordance with the timeframes set out in the Order Form.

7 **Termination**

- 7.1 Either party may terminate the Professional Services by giving the other party not less than three months' notice in writing.

Arcus Global – Product Terms

1 Definitions

1.1 In these Arcus Global Product Terms:

1.1.1 **"Virus"** means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

2 Licence

2.1 In consideration of payment of the relevant Product Charges, Arcus Global grants to the Client a non-exclusive, non-transferable licence to use the Arcus Global Products for its internal business purposes.

2.2 Subject to the Client continuing to pay the relevant Product Charges in accordance with clause 6.1 below and provided that Arcus Global has not exercised its rights to terminate this Agreement under clause 9 of the Arcus Global General Terms, the licence granted under clause 2.1 above shall be perpetual.

2.3 The Client's use of each Arcus Global Product shall be limited by the relevant Licence Restrictions. Where the Licence Restrictions limit the number of Users or restrict the Client to use by named Users, the Client shall ensure that only those Users use or access the Products and that usage is not shared with other users without Arcus Global's prior written consent.

2.4 The Client shall not sell any rights in respect of the Products to any third party or use the Products to provide services to any third party.

2.5 The Client shall not copy, reproduce, merge, translate, disassemble, decompile, recompile or reverse engineer the Arcus Global Products or create derivative works based on the whole of or any part of the Arcus Global Products. The information necessary to achieve interoperability of the Products with other computer software programs is available from Arcus Global on request.

2.6 The Client shall only modify the Products to the extent that the Order Form and/or Documentation expressly permit modification. If the Client modifies the Products under this clause (whether by configuration, customisation or otherwise):

2.6.1 the Client shall be solely responsible for such modifications; and

2.6.2 Arcus Global shall not be responsible for any adverse effect that such modifications have on the functionality or performance of the Products.

2.7 The Client shall only incorporate the Products into other software to the extent that the Order Form and/or Documentation expressly permit the Products to be incorporated into other

software. Where Products will be used with other software under this clause 2.7, the Client shall ensure that it satisfies the Access Requirements.

3 Documentation

3.1 Arcus Global grants the Client the right to possess and refer to the Documentation.

3.2 The Client shall only use the Documentation for its internal business purposes and shall not make the Documentation available for use by any third party.

3.3 The Client shall not copy the whole or any part of the Documentation, and shall not remove any trade mark, copyright or proprietary notices from the Documentation.

4 Access, delivery and installation

4.1 Arcus Global's only obligations in respect of enabling access to and/or the delivery and installation of the Arcus Global Products are set out in the Order Form as Professional Services.

4.2 To enable Arcus Global to provide the Professional Services in accordance with clause 4.1 above the Client shall ensure that the Access Requirements in respect of each Arcus Global Product are met.

5 Customer Responsibilities

5.1 Where the Order Form states that a Product is "hosted", the Client shall not in the course of using the Product access, store, distribute or transmit any Viruses or any material that:

5.1.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

5.1.2 facilitates illegal activity;

5.1.3 depicts sexually explicit images;

5.1.4 promotes unlawful violence;

5.1.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation or disability;

5.1.6 in a manner that is illegal or causes damage or injury to any person or property; or

5.1.7 has an adverse effect on the functionality or availability of any infrastructure used by or on behalf of Arcus Global to host the relevant Product.

5.2 If the Client breaches clause 5.1 above, Arcus Global reserves the right (without liability or prejudice to its other rights):

5.2.1 to disable the Client's access to any material that breaches the provisions of this clause; and/or

5.2.2 to suspend the provision of the Services or the Client's access to the Products.

5.3 The Client shall comply with the Access Requirements applicable to each Product.

6 Payment

6.1 The Client shall pay the Product Charges for the Arcus Global Products in accordance with the timeframes set out in the Order Form.

6.2 Where a Renewal Period applies to the Client's use of any Arcus Global Product, the Client shall pay the relevant Product Charges for each Renewal Period in accordance with the Order Form.

7

Termination

7.1

Either party may terminate this Agreement in respect of any Arcus Global Product by giving

the other party notice in writing equal to the Renewal Period applying to the relevant Product.

Arcus Global – Resale Terms

1 **Definitions**

1.1 In these Arcus Global Resale Terms:

1.1.1 “**Third Party Terms**” means the licence terms in respect of a Third Party Product attached to the Order Form

2 **Licence**

2.1 In consideration of payment of the relevant Product Charges, Arcus Global either:

2.1.1 grants the Client a licence to use the Third Party Products; or

2.1.2 shall procure the grant to the Client by the relevant third party of a licence to use the Third Party Products.

2.2 The Client's use of each Third Party Product shall be limited by the relevant Licence Restrictions. Where the Licence Restrictions limit the number of Users or restrict the Client to use by named Users, the Client shall ensure that only those Users use or access the Third Party Products and that usage is not shared with other users without Arcus Global's prior written consent.

2.3 The Client's use of each Third Party Product is subject to the relevant Third Party Terms.

3 **Access, delivery and installation**

3.1 Arcus Global's only obligations in respect of enabling access to and/or the delivery and installation of the Third Party Products are set out in the Order Form as Professional Services.

3.2 To enable Arcus Global to provide the Professional Services in accordance with clause 2.1 above the Client shall ensure that the Access Requirements in respect of each Third Party Product are met.

4 **Hosting**

4.1 Where Arcus Global uses third party hosting providers to provide hosting in respect of any Products, the terms of the relevant third party hosting provider will apply to such hosting (including any availability or other service level commitments). Such terms may be attached to or referenced in the Order Form.

5 **Warranties**

5.1 Arcus Global gives no warranty and accepts no liability in respect of the Third Party Products. The Client's sole remedy for any defect with any Third Party Products shall be under the terms of the relevant Third Party Terms.

5.2 If there is any loss of or corruption of the Client's data hosted by a third party, Arcus Global's sole responsibility will be to use reasonable endeavours to procure that the relevant third party reinstates or restores the relevant data.

6 **Payment**

6.1 The Client shall pay the Product Charges for the Third Party Products in accordance with the timeframes set out in the Order Form.

6.2 Where Arcus Global purchases a Third Party Product on behalf of the Client and uses a currency other than Pounds Sterling, the Client shall bear the risk of any change in the

exchange rate. Accordingly, Arcus Global reserves the right to change the Product Charges in respect of any Third Party Product to reflect any change in the applicable exchange rates.

7 **Termination**

7.1 Either party may terminate this Agreement in respect of any Third Party Product by giving the other party notice in writing equal to the Renewal Period applying to the relevant Product.

Arcus Global – Support Terms

1 Definitions

- 1.1 In these Arcus Global Support Terms, the following words and phrases shall have the following meanings:
 - 1.1.1 **"Fault"** means a demonstrable fault, error or other problem in a Product that is capable of replication by Arcus Global;
 - 1.1.2 **"Support Hours"** means the support hours set out in the Order Form;
 - 1.1.3 **"Support Request"** means a request made by the Client in accordance with clause 4 below for support in relation to the Products, including correction of a Fault; and
 - 1.1.4 **"Upgrade"** means all significant changes made to a Product, new features requiring changes to the code and testing, or work requiring senior employees of Arcus Global, including batch extracts, migration, integration, conversion and import/export, made available by Arcus Global to the Client.

2 Support Services

- 2.1 Arcus Global shall provide the following Support Services during the Support Hours via a support portal, telephone or email, as appropriate:
 - 2.1.1 a support portal (which is the preferred reporting method), email and telephone helpdesk facility during Support Hours, for reporting new Faults and monitoring Arcus Global's progress against existing incidents;
 - 2.1.2 where there is a Fault, ensuring that an engineer provides an initial telephone or email response;
 - 2.1.3 using reasonable endeavours to provide a fix (or, where a fix is not possible, workaround) for each Fault with a reasonable time after receiving notice of the Fault; and
 - 2.1.4 active monitoring of the Services with a monthly report of Arcus Global's findings.
- 2.2 Arcus Global may in its entire discretion resolve a Fault by providing a bug fix, workaround, patch or other minor modification to the Products.
- 2.3 Arcus Global shall not be liable to provide Support Services where any Fault results from or is connected with:
 - 2.3.1 the failure of the Client to comply with the relevant Access Requirements and/or any other Client Failure;
 - 2.3.2 any improper use, operation or neglect of the Products by the Client (including any use of the Products that does not comply with this Agreement, the Documentation and/or any other instructions provided to the Client by Arcus Global from time to time);
 - 2.3.3 the Client's failure to implement recommendations in respect of or solutions to Faults previously advised by Arcus Global; or
 - 2.3.4 any repair, adjustment, alteration or modification of the Products or maintenance of the Products by any person other than Arcus Global or its authorised agents without Arcus Global's prior written consent.
- 2.4 Arcus Global reserves the right:
 - 2.4.1 to refuse to respond to requests for Support Services made by any person who the Client has not nominated as one of its support

contacts in accordance with clause 5.1.1 below and if any such person makes a request for Support Services, Arcus Global shall be entitled to redirect that person to the Client's nominated support contacts;

- 2.4.2 to monitor requests for Support Services and levels of support requested and, if it is found that an excessive number of inappropriate requests for Support Services are being made to Arcus Global, to notify the Client of that fact and either temporarily or permanently to stop providing Support Services to the Client whereupon the Client shall investigate the number of requests being made and the reasons for such requests and Arcus Global may in its entire discretion assist the Client to find out the reasons for the number of requests for Support Services and to reduce the number of such requests; and
- 2.4.3 to refuse to supply Support Services in respect of any alleged fault which could have been resolved by the Client following any instructions set out in any related documentation provided by Arcus Global.

2.5 Arcus Global reserves the right to charge the Client an additional sum (at the rates set out in the Order Form or, where not agreed, its standard rates for the provision of professional services) for the provision of support or other services in any of the following circumstances: namely, where:

- 2.5.1 support or other services are provided in respect of any Fault resulting from or connected with any of the circumstances set out in paragraph 2.3;
- 2.5.2 any assistance, support or other services are provided by Arcus Global in relation to any matter referred to in clause 2.6;
- 2.5.3 performance of the Support Services is made more difficult or costly as a result of the Client's failure to inform Arcus Global of a problem as soon as reasonably practicable;
- 2.5.4 the Client requests Arcus Global to perform the Support Services outside the Support Hours; or
- 2.5.5 the Client requests that Arcus Global provides the Support Services at any of its premises where the Products is being used.

3 Upgrades

- 3.1 From time to time, Arcus Global may make Upgrades available to the Client.
- 3.2 Where Arcus Global makes available an Upgrade to the Client, the Client shall not be liable to pay additional Support Fees except where such Upgrade provide additional features in which case additional Product Charges may be payable.
- 3.3 Arcus Global may at its discretion make available minor upgrades (being any upgrade other than a major Upgrade) to the Client free of any additional charge.
- 3.4 Following installation of any Upgrade, Arcus Global's obligation to provide the Support Services shall only extend to the Products incorporating the Upgrade and shall cease in respect of the Products without the Upgrade. The Client shall not refuse any Upgrade necessary at Arcus Global's reasonable determination for the continued operation of the Products.

- 3.5 Any Upgrades made to the Products by Arcus Global form part of the Products.

4 Submitting Support Requests and access

- 4.1 The Client may request Support Services by way of a Support Request.
- 4.2 Each Support Request shall include a description and the start time of the incident.
- 4.3 The Client shall provide Arcus Global with:
- 4.3.1 prompt notice of any Faults; and
- 4.3.2 such output and other data, documents, information, assistance and (subject to compliance with all Client's security and encryption requirements notified to Arcus Global in writing) remote access to the Client system, as are reasonably necessary to assist Arcus Global to reproduce operating conditions similar to those present when the Client detected the relevant Fault and to respond to the relevant Support Request.
- 4.4 Save where agreed in advance by Arcus Global, all Support Services shall be provided from Arcus Global's office.
- 4.5 The Client acknowledges that, to assess and resolve Support Requests, it may be necessary to permit Arcus Global direct access to the Client's premises, system, files, equipment and personnel.
- 4.6 The Client shall provide such access promptly, provided that Arcus Global complies with all the Client's security requirements and other policies and procedures relating to contractors entering and working at the Client's premises notified to Arcus Global.

5 Client Responsibilities

- 5.1 The Client shall:
- 5.1.1 nominate in writing an appropriate number of appropriately technically qualified and experienced persons within its organisation who shall be the points of contact between Arcus Global and the Client for all requests for Support Services and shall notify Arcus Global in writing at least 10 Working Days in advance of any changes made to such nominations;
- 5.1.2 adequate information and written material to enable Arcus Global to recreate any Fault in respect of which the Client requests the Support Services;
- 5.1.3 procure that all Arcus Global's instructions are followed in relation to the Products;
- 5.1.4 ensure that its infrastructure meets the Access Requirements;
- 5.1.5 procure that the Products are operated only by competent users in a proper and skilful manner and in accordance with the terms of any licence for use and any related documentation;
- 5.1.6 ensure that the relevant units of the Client's computer hardware remain switched on and connected to the internet by a connection configured in accordance with any documentation related to the Products and permit Arcus Global to access and amend any information and data stored on them so that Arcus Global can provide the Support Services remotely and any necessary downloads can be completed;
- 5.1.7 take frequent and regular backups of all data and configuration information relating to the operation of the Products;

- 5.1.8 not permit anyone other than Arcus Global's authorised representatives to provide any support or maintenance services in respect of the Products; and
- 5.1.9 not use the Products or any part of it knowing it to be faulty without Arcus Global's knowledge and consent.

6 Service levels and service credits

- 6.1 Arcus Global shall use reasonable endeavours to comply with any service levels set out in the Order Form.
- 6.2 Where Arcus Global agrees in an Order Form to pay service credits in respect of any failures to comply with agreed service levels, such service credits will be the Client's sole remedy for any such failures.

7 Payment

- 7.1 The Client shall pay the Support Charges in accordance with the timeframes set out in the Order Form.
- 7.2 If the Client at any time terminates this Agreement and subsequently seeks to purchase Support Services, Arcus Global shall be entitled to charge the Client at its then current rates in respect of any period following such termination during which the Client did not purchase Support Services.

8 Termination

- 8.1 Either party may terminate the Support Services by giving the other party notice in writing equal to the Renewal Period for the Product in respect of which Arcus Global is providing Support Services.

Schedule 1 – AWS Customer Licence Terms

The following terms are written and required by Amazon Web Services (AWS) which requires that Arcus, as an AWS Reseller gains the Client's agreement to them.

1. Use of the Services.

1.1 Generally. You may access and use the Services in accordance with these License Terms and the agreement between you and Provider. AWS Service Level Agreements do not apply to your use of the Services. You will adhere to all laws, rules, and regulations applicable to your use of the Services, including the Service Terms, the Acceptable Use Policy and the other Policies as defined in Section 9.

1.2 Account Keys. Provider may provide you with account keys which will allow you to access the Services via an account. You are responsible for all activities that occur under these account keys, regardless of whether the activities are undertaken by you or a third party (including your employees, contractors or agents) and we are not responsible for unauthorized access to the account.

1.3 Third Party Materials. Third Party Materials, such as software applications provided by third parties, may be made available directly to you by other companies or individuals under separate terms and conditions, including separate fees and charges. Your use of any Third Party Materials is at your sole risk.

2. Your Responsibilities

2.1 Your Materials. You are solely responsible for the development, content, operation, maintenance, and use of Your Materials. For example, you are solely responsible for:

- (a) the technical operation of Your Materials, including ensuring that calls you make to any Service are compatible with then-current APIs for that Service;
- (b) compliance of Your Materials with the Acceptable Use Policy, the other Policies, and the law;
- (c) any claims relating to Your Materials;
- (d) properly handling and processing notices sent to you (or any of your affiliates) by any person claiming that Your Materials violate such person's rights, including notices pursuant to the Digital Millennium Copyright Act;
- (e) any action that you permit, assist or facilitate any person or entity to take related to these license Terms, Your Materials or use of the Services; and
- (f) End Users' use of Your Materials and the Services and ensuring that End Users comply with your obligations under these License Terms and that the terms of your agreement with each End User are consistent with these License Terms.

2.2 Other Security and Backup. You are responsible for properly configuring and using the Services and taking your own steps to maintain appropriate security, protection and backup of Your Materials, including using encryption technology to protect Your Materials from unauthorized access and routinely archiving Your Materials.

2.3 End User Violations. If you become aware of any violation of your obligations under these

License Terms by an End User, you will immediately terminate such End User's access to Your Materials and the Services.

3. Suspension.

We may suspend your or any End User's right to access or use any portion of the Services immediately if we determine:

- (a) you are, or any End User is, in breach of these License Terms; or
- (b) your or an End User's use of the Services (i) poses a security risk to the Services or any other AWS customer, (ii) may harm our systems or the systems or Materials of any other AWS customer, or (iii) may subject us or any third party to liability.

4. Proprietary Rights

4.1 Adequate Rights. You represent and warrant to us that:

- (a) you or your licensors own all right, title, and interest in and to Your Materials; and
- (b) none of Your Materials or End Users' use of Your Materials or the Services will violate the Acceptable Use Policy.

4.2 Service License. As between you and us, we or our licensors own and reserve all right, title, and interest in and to the Services. You are licensed to use the Services solely as a sub-licensee sub licensee of Provider in accordance with these License Terms and the agreement between you and Provider. Except as provided in this Section 4.2, you obtain no rights under these License Terms from us or our licensors to the Services, including any related intellectual property rights. Any AWS Materials you access on the AWS Site will be governed by the Terms of Use, except that some AWS Materials may be provided to you under a separate license, such as the Apache Software License, in which case that license will govern your use of those AWS Materials.

4.3 License Restrictions. Neither you nor any End User may use the Services in any manner or for any purpose other than as expressly permitted by these License Terms and the agreement between you and Provider. Neither you nor any End User may, or may attempt to,

- (a) modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the Services (except to the extent software included in the Services are provided to you under a separate license that expressly permits the creation of derivative works),
 - (b) reverse engineer, disassemble, or decompile the Services or apply any other process or procedure to derive the source code of any software included in the Services, or (c) access or use the Services in a way intended to avoid incurring fees or exceeding usage limits or quotas.
- All licenses granted to you with respect to the Services are conditional on your continued compliance with these License Terms, and will immediately and automatically terminate if you do not comply with any term or condition of these License Terms. You will not assert, nor will you authorize, assist, or encourage any third party to assert, against us or any of our customers,

vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Services you have used.

4.4 Suggestions. If you provide any Suggestions to us, we will own all right, title, and interest in and to the Suggestions, even if you have designated the Suggestions as confidential. We will be entitled to use the Suggestions without restriction. You hereby irrevocably assign to us all right, title, and interest in and to the Suggestions and agree to provide us any assistance we may require to document, perfect, and maintain our rights in the Suggestions.

5. Indemnification.

You will defend, indemnify, and hold harmless us, our licensors and each of our respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning:

(a) your or any End Users' use of the Services (including use by your employees and personnel); (b) Your Materials or the combination of Your Materials with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights or the use, development, design, production, advertising or marketing of Your Materials; or (c) a dispute between you and any End User.

6. Disclaimers.

THE SERVICES ARE PROVIDED "AS IS." WE AND OUR LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICES OR THE THIRD PARTY MATERIALS, INCLUDING ANY WARRANTY THAT THE SERVICES OR THIRD PARTY MATERIALS WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY MATERIALS, INCLUDING YOUR MATERIALS OR THE THIRD PARTY MATERIALS, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE AND OUR LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

7. Limitations of Liability.

WE AND OUR AFFILIATES OR LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH:

(A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) SUSPENSION OF YOUR USE OF OR ACCESS TO THE SERVICES, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICES, OR, (III) ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON; OR

(B) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR MATERIALS OR OTHER DATA THAT YOU OR ANY END USER SUBMITS OR USES IN CONNECTION WITH THE SERVICES (INCLUDING AS A RESULT OF YOUR OR ANY END USERS' ERRORS, ACTS OR OMISSIONS).

8. Miscellaneous.

8.1 Modifications to these License Terms. We may modify these License Terms (including any Policies) at any time by posting a revised version on the AWS Site. The modified terms will become effective upon posting.

8.2 U.S. Government Rights. In accordance with Federal Acquisition Regulation (FAR) Sections 12.211 and 12.212, and Defense Federal Acquisition Regulation Supplement (DFARS) Sections 227.7202-1 and 227.7202-3, the Services are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Services. If you are using the Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the Services. The terms "commercial item" "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the FAR and the DFARS.

8.3 Import and Export Compliance. In connection with these License Terms, you will comply with all applicable import, re-import, export, and re-export control laws and regulations.

8.4 Governing Law; Venue. The laws of the State of Washington, without reference to conflict of law rules, govern these License Terms and any dispute of any sort that might arise between you and us. You irrevocably consent to exclusive jurisdiction and venue of the state or federal courts located in King County, Washington with respect to any dispute arising in connection with the Services or these License Terms. We may seek injunctive or other relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of our or any third party's intellectual property or other proprietary rights. The United Nations Convention for the International Sale of Goods does not apply to these License Terms.

8.5 Entire Agreement. These License Terms include the Policies and are the entire agreement between you and us regarding the subject matter of these License Terms. These License Terms supersede all prior or contemporaneous representations, understandings, agreements, or communications between you and us, whether written or verbal, regarding the subject matter of

these License Terms. If the terms of this document are inconsistent with the terms contained in your agreement with Provider, the terms contained in this document will control.

8.6 Survival. The following provisions will survive any termination of your use of the Services: Sections 2.1, 4, 5, 6, 7, 8, and 9.

9. Definitions.

"Acceptable Use Policy" means the policy currently available at <http://aws.amazon.com/aup>, as it may be updated by us from time to time.

"API" means an application program interface.

"AWS Materials" means Materials we make available in connection with the Services or on the AWS Site to allow access to and use of the Services, including WSDLs; Documentation; sample code; software libraries; command line tools; and other related technology. AWS Materials does not include the Services.

"AWS Service Level Agreement" means all service level agreements that we offer with respect to the Services and post on the AWS Site, as they may be updated by us from time to time.

"AWS Site" means <http://aws.amazon.com> and any successor or related site designated by us.

"Documentation" means the developer guides, getting started guides, user guides, quick reference guides, and other technical and operations manuals and specifications for the Services currently located at <http://aws.amazon.com/documentation>, as such documentation may be updated by us from time to time.

"End User" means any individual or entity that directly or indirectly through another user:

- (a) accesses or uses Your Materials; or
- (b) otherwise accesses or uses the Services through you.

"Materials" means software (including machine images), data, text, audio, video, images or other content.

"Policies" means the Acceptable Use Policy, the Terms of Use, the Service Terms, all restrictions described in the AWS Materials and on the AWS Site, and any other policy or terms referenced in or incorporated into these License Terms.

"Service" means each of the web services made available by us, including those web services described in the Service Terms.

"Service Terms" means the rights and restrictions for particular Services located at <http://aws.amazon.com/serviceterms>, as they may be updated by us from time to time.

"Suggestions" means all suggested improvements to the Services or AWS Materials that you provide to us.

"Terms of Use" means the terms of use located at <http://aws.amazon.com/terms/>, as they may be updated by us from time to time.

"Third Party Materials" means Materials made available to you by any third party on the AWS Site or in conjunction with the Services.

"Your Materials" means Materials you or any End User

- (a) run on the Services,
- (b) cause to interface with the Services, or
- (c) upload to the Services or otherwise transfer, process, use or store in connection with the Services.

Annex D – Exit Plan

Annex E – Call-off template