



# Crown Commercial Service


## G-Cloud 12 Call-Off Contract

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

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## Part A: Order Form

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

<b>Digital Marketplace service ID number</b>	206006993767124
<b>Call-Off Contract reference</b>	Interactive Business SMS Services
<b>Call-Off Contract title</b>	Interactive Business SMS Services
<b>Call-Off Contract description</b>	The scope of the contract involves the provision of an SMS messaging service for 2 Factor Authentication codes. This will be used to provide a two factor authentication functionality for the 'My NHS Pension' member portal SMS Services for 2FA codes
<b>Start date</b>	As per the date signed for by both parties.
<b>Expiry date</b>	12 Months after the Start Date
<b>Call-Off Contract value</b>	
<b>Charging method</b>	<ul style="list-style-type: none"><li>• 30 day invoice terms.</li><li>• BACs payment for all invoice values, with a minimum of £15 platform fee.</li><li>• If payments are not received within 30 days as agreed, Esendex will suspend account services on the 14th day of the invoice being overdue.</li><li>• Rolling 12 month purchase order to be applied to each invoice</li></ul>
<b>Purchase order number</b>	TBC

This Order Form is issued under the G-Cloud 12 Framework Agreement (RM1557.12).

Buyers can use this Order Form to specify their G-Cloud service requirements when placing an Order.

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

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

<b>From the Buyer</b>	NHS Business Services Authority Stella House Goldcrest Way Newburn Riverside Newcastle upon Tyne NE15 8NY
<b>To the Supplier</b>	Commify UK Limited (T/A Esendex) 0345 356 5758 20 Wollaton Street Nottingham Nottinghamshire NG15FW United Kingdom Company number: 04217280
<b>Together the 'Parties'</b>	

## Principal contact details

### For the Buyer:

Title: Commercial Officer (Apprentice)

Name: Matthew Renwick

Email: [matthew.renwick@nhs.net](mailto:matthew.renwick@nhs.net)

### For the Supplier:

Title: Sales Manager (Key Accounts)

Name: Anthony Timbrell

Email: [anthony.timbrell@commify.com](mailto:anthony.timbrell@commify.com)

Phone: 07966185368

## Call-Off Contract term

<b>Start date</b>	This Call-Off Contract Starts on the date signed on behalf of the Buyer and is valid for 12 months.
<b>Ending (termination)</b>	<p>The notice period for the Supplier needed for Ending the Call-Off Contract is at least 90 Working Days from the date of written notice for undisputed sums (as per clause 18.6).</p> <p>The notice period for the Buyer is a maximum of 30 days from the date of written notice for Ending without cause (as per clause 18.1).</p>
<b>Extension period</b>	The full term of this contract does not include any optional extension periods

## Buyer contractual details

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

<b>G-Cloud lot</b>	<p>This Call-Off Contract is for the provision of Services under:</p> <ul style="list-style-type: none"> <li>• Lot 2: Cloud software</li> </ul>
<b>G-Cloud services required</b>	<p>The Services to be provided by the Supplier under the above Lot are listed in Framework Section 2 and outlined below:</p> <ul style="list-style-type: none"> <li>• <b>SMS Services (Outbound and Inbound as required)</b></li> <li>• <b>Virtual Mobile Number (If required)</b></li> <li>• <b>API integration to enable 2FA</b></li> </ul> <p>Anticipated – 240,000 SMS Messages during the lifetime of the contract.</p>
<b>Additional Services</b>	N/A
<b>Location</b>	<p>The Services will be delivered to:</p> <ul style="list-style-type: none"> <li>• Web based services</li> <li>• No onsite entry or access required</li> </ul>
<b>Quality standards</b>	<p>The quality standards required for this Call-Off Contract are:</p> <ul style="list-style-type: none"> <li>• The quality standards required for this Call-Off Contract are: ESENDEX hold independent ISO27001-2013 accreditations which underpin business operations and Cloud Platform.</li> </ul>
<b>Technical standards:</b>	<p>The technical standards used as a requirement for this Call-Off Contract are:</p> <ul style="list-style-type: none"> <li>• The technical standards required for this Call-Off Contract are as per the Esendex Service Description.</li> </ul>

<b>Service level agreement:</b>	<p>[REDACTED]</p> <ul style="list-style-type: none"> <li>[REDACTED]</li> <li>[REDACTED]</li> </ul>
<b>Onboarding</b>	<p>The onboarding plan for this Call-Off Contract is:</p> <ul style="list-style-type: none"> <li>• Dedicated Account Manager <ul style="list-style-type: none"> <li>○ Full account setup <ul style="list-style-type: none"> <li>▪ User set up</li> <li>▪ API access</li> </ul> </li> </ul> </li> <li>• Training if required</li> </ul>
<b>Offboarding</b>	<p>The offboarding plan for this Call-Off Contract is:</p> <ul style="list-style-type: none"> <li>• Account closure on or within the agreed timeframe</li> <li>• Final Invoices issued</li> <li>• From the agreed data retention policy (2 years) data is automatically deleted after an agreed period.</li> <li>• 2 year countdown starts from the message delivery date.</li> <li>• When the contract ends, Esendex can delete all remaining data still within the 2 year retention policy, on request.</li> </ul>
<b>Collaboration agreement</b>	N/A
<b>Limit on Parties' liability</b>	<p>The annual total liability of either Party for all Property Defaults will not exceed £100,000</p>
<b>Insurance</b>	<p>The insurance(s) required will be:</p> <ul style="list-style-type: none"> <li>• Esendex will have a minimum insurance period of 1 years following the expiration or Ending of this Call-Off Contract</li> <li>• This is to cover any post contract issues that might arise.</li> </ul>

<b>Force majeure</b>	A Party may End this Call-Off Contract if the Other Party is affected by a Force Majeure Event that lasts for more than 90 consecutive days.
<b>Audit</b>	The following Framework Agreement audit provisions will be incorporated under clause 2.1 of this Call-Off Contract to enable the Buyer to carry out audits 90 days.
<b>Buyer's responsibilities</b>	<p>The Buyer is responsible for:</p> <ul style="list-style-type: none"> <li>• Managing and updating user access on the web portal</li> <li>• Providing, account number(s), screenshot and a full account of issues or errors that require Support services</li> <li>• Monitoring the appropriate use on the platform and ensuring business communications only</li> <li>• Settling Invoices within the agreed invoices terms</li> </ul>
<b>Buyer's equipment</b>	<p>The Buyer's equipment to be used with this Call-Off Contract includes:</p> <ul style="list-style-type: none"> <li>• Access to a PC or Laptop with a web browser interface</li> <li>• API integration and access capability within CRM systems</li> </ul> <p>Reason:</p> <ul style="list-style-type: none"> <li>• Web based portal, access to the internet is necessary to facilitate the services, download reports and perform general maintenance on the account such as removing outdated Users from the platform.</li> </ul>

## Supplier's information

<b>Subcontractors or partners</b>	For Esendex to perform the services required it is a requirement to communicate with Network Providers such as: <ul style="list-style-type: none"> <li>○ Vodafone, EE, O2, Three</li> </ul>
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## Call-Off Contract charges and payment

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

<b>Payment method</b>	The payment method for this Call-Off Contract is 30 day invoice and <b>Bacs payment</b>
<b>Payment profile</b>	The payment profile for this Call-Off Contract is <b>monthly</b> in arrears.
<b>Invoice details</b>	The Supplier will issue electronic invoices <b>monthly</b> in arrears. The Buyer will pay the Supplier within <b>30</b> days of receipt of a valid invoice.
<b>Who and where to send invoices to</b>	Invoices will be sent:  Via email (preferred) to: <a href="mailto:nhsbsa.accountspayable@nhs.net">nhsbsa.accountspayable@nhs.net</a>  Or by post to: Stella House, Goldcrest Way, Newburn Riverside Park, Newcastle-Upon-Tyne, Tyne & Wear, NE15 8NY
<b>Invoice information required</b>	All invoices must include: <ul style="list-style-type: none"> <li>• Purchase order reference number</li> <li>• Dates – Service period</li> <li>• Quantities and costs</li> <li>• Bank details</li> </ul>
<b>Invoice frequency</b>	Invoice will be sent to the Buyer last day of every month.
<b>Call-Off Contract value</b>	The total value of this Call-Off Contract is <span style="background-color: black; color: black;">XXXXXXXXXX</span>



<b>Call-Off Contract charges</b>	[REDACTED]
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#### Additional Buyer terms

<b>Performance of the Service and Deliverables</b>	[REDACTED]				
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Guarantee</b>	N/A				
<b>Warranties, representations</b>	N/A				
<b>Supplemental requirements in addition to the Call-Off terms</b>	N/A				
<b>Buyer specific amendments to/refinements of the Call-Off Contract terms</b>	N/A				

<b>Public Services Network (PSN)</b>	N/A
<b>Personal Data and Data Subjects</b>	Annex 1 of Schedule 7 is being used

## 1. Formation of contract

- 1.1 By signing and returning this Order Form (Part A), the Supplier agrees to enter into a Call-Off Contract with the Buyer.
- 1.2 The Parties agree that they have read the Order Form (Part A) and the Call-Off Contract terms and by signing below agree to be bound by this Call-Off Contract.
- 1.3 This Call-Off Contract will be formed when the Buyer acknowledges receipt of the signed copy of the Order Form from the Supplier.
- 1.4 In cases of any ambiguity or conflict, the terms and conditions of the Call-Off Contract (Part B) and Order Form (Part A) will supersede those of the Supplier Terms and Conditions as per the order of precedence set out in clause 8.3 of the Framework Agreement.

## 2. Background to the agreement

- 2.1 The Supplier is a provider of G-Cloud Services and agreed to provide the Services under the terms of Framework Agreement number RM1557.12.
- 2.2 The Buyer provided an Order Form for Services to the Supplier.

<b>Signed</b>	For and on behalf of the Supplier	For and on behalf of the Buyer
	Signed via DocuSign on 28/06/2022	Signed via DocuSign on 28/06/2022

## Schedule 1: Services

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## Schedule 2: Call-Off Contract charges

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

## Part B: Terms and conditions

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

- 1.1 The Supplier must start providing the Services on the date specified in the Order Form.
- 1.2 This Call-Off Contract will expire on the Expiry Date in the Order Form. It will be for up to 12 months from the Start date unless Ended earlier under clause 18 or extended by the Buyer under clause 1.3.
- 1.3
- 1.4 The Parties must comply with the requirements under clauses 21.3 to 21.8 if the Buyer reserves the right in the Order Form to extend the contract beyond 24 months.

### 2. Incorporation of terms

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

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

- 8.91 to 8.101 (Corporate Social Responsibility)
- paragraphs 1 to 10 of the Framework Agreement glossary and interpretation
- any audit provisions from the Framework Agreement set out by the Buyer in the Order Form

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

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

2.2.2 a reference to 'CCS' will be a reference to 'the Buyer'

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

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

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

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

### 3. Supply of services

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

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

### 4. Supplier staff

4.1 The Supplier Staff must:

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

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

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

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

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

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

- 4.3 The Supplier may substitute any Supplier Staff as long as they have the equivalent experience and qualifications to the substituted staff member.
- 4.4 The Buyer may conduct IR35 Assessments using the ESI tool to assess whether the Supplier's engagement under the Call-Off Contract is Inside or Outside IR35.
- 4.5 The Buyer may End this Call-Off Contract for Material Breach as per clause 18.5 hereunder if the Supplier is delivering the Services Inside IR35.
- 4.6 The Buyer may need the Supplier to complete an Indicative Test using the ESI tool before the Start date or at any time during the provision of Services to provide a preliminary view of whether the Services are being delivered Inside or Outside IR35. If the Supplier has completed the Indicative Test, it must download and provide a copy of the PDF with the 14-digit ESI reference number from the summary outcome screen and promptly provide a copy to the Buyer.
- 4.7 If the Indicative Test indicates the delivery of the Services could potentially be Inside IR35, the Supplier must provide the Buyer with all relevant information needed to enable the Buyer to conduct its own IR35 Assessment.
- 4.8 If it is determined by the Buyer that the Supplier is Outside IR35, the Buyer will provide the ESI reference number and a copy of the PDF to the Supplier.

## 5. Due diligence

- 5.1 Both Parties agree that when entering into a Call-Off Contract they:
  - 5.1.1 have made their own enquiries and are satisfied by the accuracy of any information supplied by the other Party
  - 5.1.2 are confident that they can fulfil their obligations according to the Call-Off Contract terms
  - 5.1.3 have raised all due diligence questions before signing the Call-Off Contract
  - 5.1.4 have entered into the Call-Off Contract relying on its own due diligence

## 6. Business continuity and disaster recovery

- 6.1 The Supplier will have a clear business continuity and disaster recovery plan in their service descriptions.
- 6.2 The Supplier's business continuity and disaster recovery services are part of the Services and will be performed by the Supplier when required.
- 6.3 If requested by the Buyer prior to entering into this Call-Off Contract, the Supplier must ensure that its business continuity and disaster recovery plan is consistent with the Buyer's own plans.

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

- 7.1 The Buyer must pay the Charges following clauses 7.2 to 7.11 for the Supplier's delivery of the Services.
- 7.2 The Buyer will pay the Supplier within the number of days specified in the Order Form on receipt of a valid invoice.
- 7.3 The Call-Off Contract Charges include all Charges for payment Processing. All invoices submitted to the Buyer for the Services will be exclusive of any Management Charge.
- 7.4 If specified in the Order Form, the Supplier will accept payment for G-Cloud Services by the Government Procurement Card (GPC). The Supplier will be liable to pay any merchant fee levied for using the GPC and must not recover this charge from the Buyer.
- 7.5 The Supplier must ensure that each invoice contains a detailed breakdown of the G-Cloud Services supplied. The Buyer may request the Supplier provides further documentation to substantiate the invoice.
- 7.6 If the Supplier enters into a Subcontract it must ensure that a provision is included in each Subcontract which specifies that payment must be made to the Subcontractor within 30 days of receipt of a valid invoice.
- 7.7 All Charges payable by the Buyer to the Supplier will include VAT at the appropriate Rate.
- 7.8 The Supplier must add VAT to the Charges at the appropriate rate with visibility of the amount as a separate line item.
- 7.9 The Supplier will indemnify the Buyer on demand against any liability arising from the Supplier's failure to account for or to pay any VAT on payments made to the Supplier under this Call-Off Contract. The Supplier must pay all sums to the Buyer at least 5 Working Days before the date on which the tax or other liability is payable by the Buyer.
- 7.10 The Supplier must not suspend the supply of the G-Cloud Services unless the Supplier is entitled to End this Call-Off Contract under clause 18.6 for Buyer's failure to pay undisputed sums of money. Interest will be payable by the Buyer on the late payment of any undisputed sums of money properly invoiced under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.11 If there's an invoice dispute, the Buyer must pay the undisputed portion of the amount and return the invoice within 10 Working Days of the invoice date. The Buyer will provide a covering statement with proposed amendments and the reason for any non-payment. The Supplier must notify the Buyer within 10 Working Days of receipt of the returned invoice if it accepts the amendments. If it does then the Supplier must provide a replacement valid invoice with the response.
- 7.12 Due to the nature of G-Cloud Services it isn't possible in a static Order Form to exactly define the consumption of services over the duration of the Call-Off Contract. The Supplier agrees that the Buyer's volumes indicated in the Order Form are indicative only.

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

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

## 9. Insurance

- 9.1 The Supplier will maintain the insurances required by the Buyer including those in this clause.
- 9.2 The Supplier will ensure that:
  - 9.2.1 during this Call-Off Contract, Subcontractors hold third party public and products liability insurance of the same amounts that the Supplier would be legally liable to pay as damages, including the claimant's costs and expenses, for accidental death or bodily injury and loss of or damage to Property, to a minimum of £1,000,000
  - 9.2.2 the third-party public and products liability insurance contains an 'indemnity to principals' clause for the Buyer's benefit
  - 9.2.3 all agents and professional consultants involved in the Services hold professional indemnity insurance to a minimum indemnity of £1,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date
  - 9.2.4 all agents and professional consultants involved in the Services hold employers liability insurance (except where exempt under Law) to a minimum indemnity of £5,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date
- 9.3 If requested by the Buyer, the Supplier will obtain additional insurance policies, or extend existing policies bought under the Framework Agreement.
- 9.4 If requested by the Buyer, the Supplier will provide the following to show compliance with this clause:
  - 9.4.1 a broker's verification of insurance
  - 9.4.2 receipts for the insurance premium
  - 9.4.3 evidence of payment of the latest premiums due
- 9.5 Insurance will not relieve the Supplier of any liabilities under the Framework Agreement or this Call-Off Contract and the Supplier will:
  - 9.5.1 take all risk control measures using Good Industry Practice, including the investigation and reports of claims to insurers
  - 9.5.2 promptly notify the insurers in writing of any relevant material fact under any Insurances
  - 9.5.3 hold all insurance policies and require any broker arranging the insurance to hold any insurance slips and other evidence of insurance
- 9.6 The Supplier will not do or omit to do anything, which would destroy or impair the legal validity of the insurance.



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

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

9.8.1 premiums, which it will pay promptly

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

## 10. Confidentiality

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

## 11. Intellectual Property Rights

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

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

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

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

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

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

11.5.2 Supplier's performance of the Services

11.5.3 use by the Buyer of the Services

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

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

- 11.6.2 substitute Services of equivalent functionality and performance, to avoid the infringement or the alleged infringement, as long as there is no additional cost or burden to the Buyer
  - 11.6.3 buy a licence to use and supply the Services which are the subject of the alleged infringement, on terms acceptable to the Buyer
- 11.7 Clause 11.5 will not apply if the IPR Claim is from:
  - 11.7.2 the use of data supplied by the Buyer which the Supplier isn't required to verify under this Call-Off Contract
  - 11.7.3 other material provided by the Buyer necessary for the Services
- 11.8 If the Supplier does not comply with clauses 11.2 to 11.6, the Buyer may End this Call-Off Contract for Material Breach. The Supplier will, on demand, refund the Buyer all the money paid for the affected Services.

## 12. Protection of information

- 12.1 The Supplier must:
  - 12.1.1 comply with the Buyer's written instructions and this Call-Off Contract when Processing Buyer Personal Data
  - 12.1.2 only Process the Buyer Personal Data as necessary for the provision of the G-Cloud Services or as required by Law or any Regulatory Body
  - 12.1.3 take reasonable steps to ensure that any Supplier Staff who have access to Buyer Personal Data act in compliance with Supplier's security processes
- 12.2 The Supplier must fully assist with any complaint or request for Buyer Personal Data including by:
  - 12.2.1 providing the Buyer with full details of the complaint or request
  - 12.2.2 complying with a data access request within the timescales in the Data Protection Legislation and following the Buyer's instructions
  - 12.2.3 providing the Buyer with any Buyer Personal Data it holds about a Data Subject (within the timescales required by the Buyer)
  - 12.2.4 providing the Buyer with any information requested by the Data Subject
- 12.3 The Supplier must get prior written consent from the Buyer to transfer Buyer Personal Data to any other person (including any Subcontractors) for the provision of the G-Cloud Services.

## 13. Buyer data

- 13.1 The Supplier must not remove any proprietary notices in the Buyer Data.
- 13.2 The Supplier will not store or use Buyer Data except if necessary to fulfil its obligations.
- 13.3 If Buyer Data is processed by the Supplier, the Supplier will supply the data to the Buyer as requested.
- 13.4 The Supplier must ensure that any Supplier system that holds any Buyer Data is a secure system that complies with the Supplier's and Buyer's security policies and all Buyer requirements in the Order Form.
- 13.5 The Supplier will preserve the integrity of Buyer Data processed by the Supplier and prevent its corruption and loss.
- 13.6 The Supplier will ensure that any Supplier system which holds any protectively marked Buyer Data or other government data will comply with:
  - 13.6.1 the principles in the Security Policy Framework:  
<https://www.gov.uk/government/publications/security-policy-framework> and  
the Government Security Classification policy:  
<https://www.gov.uk/government/publications/government-security-classifications>
  - 13.6.2 guidance issued by the Centre for Protection of National Infrastructure on Risk Management:  
<https://www.cpni.gov.uk/content/adopt-risk-management-approach> and  
Protection of Sensitive Information and Assets:  
<https://www.cpni.gov.uk/protection-sensitive-information-and-assets>
  - 13.6.3 the National Cyber Security Centre's (NCSC) information risk management guidance:  
<https://www.ncsc.gov.uk/collection/risk-management-collection>
  - 13.6.4 government best practice in the design and implementation of system components, including network principles, security design principles for digital services and the secure email blueprint:  
<https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>
  - 13.6.5 the security requirements of cloud services using the NCSC Cloud Security Principles and accompanying guidance:  
<https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles>
  - 13.6.6 buyer requirements in respect of AI ethical standards
- 13.7 The Buyer will specify any security requirements for this project in the Order Form.
- 13.8 If the Supplier suspects that the Buyer Data has or may become corrupted, lost, breached or significantly degraded in any way for any reason, then the Supplier will notify the Buyer

immediately and will (at its own cost if corruption, loss, breach or degradation of the Buyer Data was caused by the action or omission of the Supplier) comply with any remedial action reasonably proposed by the Buyer.

- 13.9 The Supplier agrees to use the appropriate organisational, operational and technological processes to keep the Buyer Data safe from unauthorised use or access, loss, destruction, theft or disclosure.
- 13.10 The provisions of this clause 13 will apply during the term of this Call-Off Contract and for as long as the Supplier holds the Buyer's Data.

## 14. Standards and quality

- 14.1 The Supplier will comply with any standards in this Call-Off Contract, the Order Form and the Framework Agreement.
- 14.2 The Supplier will deliver the Services in a way that enables the Buyer to comply with its obligations under the Technology Code of Practice, which is at:  
<https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>
- 14.3 If requested by the Buyer, the Supplier must, at its own cost, ensure that the G-Cloud Services comply with the requirements in the PSN Code of Practice.
- 14.4 If any PSN Services are Subcontracted by the Supplier, the Supplier must ensure that the services have the relevant PSN compliance certification.
- 14.5 The Supplier must immediately disconnect its G-Cloud Services from the PSN if the PSN Authority considers there is a risk to the PSN's security and the Supplier agrees that the Buyer and the PSN Authority will not be liable for any actions, damages, costs, and any other Supplier liabilities which may arise.

## 15. Open source

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

## 16. Security

- 16.1 If requested to do so by the Buyer, before entering into this Call-Off Contract the Supplier will, within 15 Working Days of the date of this Call-Off Contract, develop (and obtain the Buyer's written approval of) a Security Management Plan and an Information Security Management System. After Buyer approval the Security Management Plan and Information Security Management System will apply during the Term of this Call-Off Contract. Both

plans will comply with the Buyer's security policy and protect all aspects and processes associated with the delivery of the Services.

- 16.2 The Supplier will use all reasonable endeavours, software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software.
- 16.3 If Malicious Software causes loss of operational efficiency or loss or corruption of Service Data, the Supplier will help the Buyer to mitigate any losses and restore the Services to operating efficiency as soon as possible.
- 16.4 Responsibility for costs will be at the:
  - 16.4.1 Supplier's expense if the Malicious Software originates from the Supplier software or the Service Data while the Service Data was under the control of the Supplier, unless the Supplier can demonstrate that it was already present, not quarantined or identified by the Buyer when provided
  - 16.4.2 Buyer's expense if the Malicious Software originates from the Buyer software or the Service Data, while the Service Data was under the Buyer's control
- 16.5 The Supplier will immediately notify the Buyer of any breach of security of Buyer's Confidential Information (and the Buyer of any Buyer Confidential Information breach). Where the breach occurred because of a Supplier Default, the Supplier will recover the Buyer's Confidential Information however it may be recorded.
- 16.6 Any system development by the Supplier should also comply with the government's '10 Steps to Cyber Security' guidance:  
<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>
- 16.7 If a Buyer has requested in the Order Form that the Supplier has a Cyber Essentials certificate, the Supplier must provide the Buyer with a valid Cyber Essentials certificate (or equivalent) required for the Services before the Start date.

## 17. Guarantee

- 17.1 If this Call-Off Contract is conditional on receipt of a Guarantee that is acceptable to the Buyer, the Supplier must give the Buyer on or before the Start date:
  - 17.1.1 an executed Guarantee in the form at Schedule 5
  - 17.1.2 a certified copy of the passed resolution or board minutes of the guarantor approving the execution of the Guarantee

## 18. Ending the Call-Off Contract

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

18.2 The Parties agree that the:

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

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

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

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

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

18.4.2 any fraud

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

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

18.5.2 an Insolvency Event of the other Party happens

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

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

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

## 19. Consequences of suspension, ending and expiry

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

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

- 19.3 The rights and obligations of the Parties will cease on the Expiry Date or End Date (whichever applies) of this Call-Off Contract, except those continuing provisions described in clause 19.4.
- 19.4 Ending or expiry of this Call-Off Contract will not affect:
- 19.4.1 any rights, remedies or obligations accrued before its Ending or expiration
- 19.4.2 the right of either Party to recover any amount outstanding at the time of Ending or expiry
- 19.4.3 the continuing rights, remedies or obligations of the Buyer or the Supplier under clauses
- 7 (Payment, VAT and Call-Off Contract charges)
  - 8 (Recovery of sums due and right of set-off)
  - 9 (Insurance)
  - 10 (Confidentiality)
  - 11 (Intellectual property rights)
  - 12 (Protection of information)
  - 13 (Buyer data)
  - 19 (Consequences of suspension, ending and expiry)
  - 24 (Liability); incorporated Framework Agreement clauses: 4.2 to 4.7 (Liability)
  - 8.44 to 8.50 (Conflicts of interest and ethical walls)
  - 8.89 to 8.90 (Waiver and cumulative remedies)
- 19.4.4 any other provision of the Framework Agreement or this Call-Off Contract which expressly or by implication is in force even if it Ends or expires
- 19.5 At the end of the Call-Off Contract Term, the Supplier must promptly:
- 19.5.1 return all Buyer Data including all copies of Buyer software, code and any other software licensed by the Buyer to the Supplier under it
- 19.5.2 return any materials created by the Supplier under this Call-Off Contract if the IPRs are owned by the Buyer
- 19.5.3 stop using the Buyer Data and, at the direction of the Buyer, provide the Buyer with a complete and uncorrupted version in electronic form in the formats and on media agreed with the Buyer
- 19.5.4 destroy all copies of the Buyer Data when they receive the Buyer's written instructions to do so or 12 calendar months after the End or Expiry Date, and provide written confirmation to the Buyer that the data has been securely destroyed, except if the retention of Buyer Data is required by Law
- 19.5.5 work with the Buyer on any ongoing work
- 19.5.6 return any sums prepaid for Services which have not been delivered to the Buyer, within 10 Working Days of the End or Expiry Date

- 19.6 Each Party will return all of the other Party's Confidential Information and confirm this has been done, unless there is a legal requirement to keep it or this Call-Off Contract states otherwise.
- 19.7 All licences, leases and authorisations granted by the Buyer to the Supplier will cease at the end of the Call-Off Contract Term without the need for the Buyer to serve notice except if this Call-Off Contract states otherwise.

## 20. Notices

- 20.1 Any notices sent must be in writing. For the purpose of this clause, an email is accepted as being 'in writing'.
- Manner of delivery: email
  - Deemed time of delivery: 9am on the first Working Day after sending
  - Proof of service: Sent in an emailed letter in PDF format to the correct email address without any error message
- 20.2 This clause does not apply to any legal action or other method of dispute resolution which should be sent to the addresses in the Order Form (other than a dispute notice under this Call-Off Contract).

## 21. Exit plan

- 21.1 The Supplier must provide an exit plan in its Application which ensures continuity of service and the Supplier will follow it.
- 21.2 When requested, the Supplier will help the Buyer to migrate the Services to a replacement supplier in line with the exit plan. This will be at the Supplier's own expense if the Call-Off Contract Ended before the Expiry Date due to Supplier cause.
- 21.3 If the Buyer has reserved the right in the Order Form to extend the Call-Off Contract Term beyond 24 months the Supplier must provide the Buyer with an additional exit plan for approval by the Buyer at least 8 weeks before the 18 month anniversary of the Start date.
- 21.4 The Supplier must ensure that the additional exit plan clearly sets out the Supplier's methodology for achieving an orderly transition of the Services from the Supplier to the Buyer or its replacement Supplier at the expiry of the proposed extension period or if the contract Ends during that period.
- 21.5 Before submitting the additional exit plan to the Buyer for approval, the Supplier will work with the Buyer to ensure that the additional exit plan is aligned with the Buyer's own exit plan and strategy.
- 21.6 The Supplier acknowledges that the Buyer's right to extend the Term beyond 24 months is subject to the Buyer's own governance process. Where the Buyer is a central government department, this includes the need to obtain approval from GDS under the Spend Controls



process. The approval to extend will only be given if the Buyer can clearly demonstrate that the Supplier's additional exit plan ensures that:

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

21.6.2 there will be no adverse impact on service continuity

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

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

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

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

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

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

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

21.8.4 the testing and assurance strategy for exported Buyer Data

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

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

## 22. Handover to replacement supplier

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

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

22.1.2 other information reasonably requested by the Buyer

22.2 On reasonable notice at any point during the Term, the Supplier will provide any information and data about the G-Cloud Services reasonably requested by the Buyer (including information on volumes, usage, technical aspects, service performance and staffing). This

will help the Buyer understand how the Services have been provided and to run a fair competition for a new supplier.

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

## 23. Force majeure

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

## 24. Liability

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

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

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

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

## 25. Premises

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

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

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

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

- 25.5 While on the Buyer's premises, the Supplier will:

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

25.5.2 comply with Buyer requirements for the conduct of personnel

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

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

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

## 26. Equipment

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

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

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

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

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

## 28. Environmental requirements

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

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

## 29. The Employment Regulations (TUPE)

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

- 29.2 Twelve months before this Call-Off Contract expires, or after the Buyer has given notice to End it, and within 28 days of the Buyer's request, the Supplier will fully and accurately disclose to the Buyer all staff information including, but not limited to, the total number of staff assigned for the purposes of TUPE to the Services. For each person identified the Supplier must provide details of:
- 29.2.1 the activities they perform
  - 29.2.2 age
  - 29.2.3 start date
  - 29.2.4 place of work
  - 29.2.5 notice period
  - 29.2.6 redundancy payment entitlement
  - 29.2.7 salary, benefits and pension entitlements
  - 29.2.8 employment status
  - 29.2.9 identity of employer
  - 29.2.10 working arrangements
  - 29.2.11 outstanding liabilities
  - 29.2.12 sickness absence
  - 29.2.13 copies of all relevant employment contracts and related documents
  - 29.2.14 all information required under regulation 11 of TUPE or as reasonably requested by the Buyer
- 29.3 The Supplier warrants the accuracy of the information provided under this TUPE clause and will notify the Buyer of any changes to the amended information as soon as reasonably possible. The Supplier will permit the Buyer to use and disclose the information to any prospective Replacement Supplier.
- 29.4 In the 12 months before the expiry of this Call-Off Contract, the Supplier will not change the identity and number of staff assigned to the Services (unless reasonably requested by the Buyer) or their terms and conditions, other than in the ordinary course of business.
- 29.5 The Supplier will co-operate with the re-tendering of this Call-Off Contract by allowing the Replacement Supplier to communicate with and meet the affected employees or their representatives.
- 29.6 The Supplier will indemnify the Buyer or any Replacement Supplier for all Loss arising from both:
- 29.6.1 its failure to comply with the provisions of this clause
  - 29.6.2 any claim by any employee or person claiming to be an employee (or their employee representative) of the Supplier which arises or is alleged to arise from any act or omission by the Supplier on or before the date of the Relevant Transfer
- 29.7 The provisions of this clause apply during the Term of this Call-Off Contract and indefinitely after it Ends or expires.
- 29.8 For these TUPE clauses, the relevant third party will be able to enforce its rights under this clause but their consent will not be required to vary these clauses as the Buyer and Supplier may agree.

## 30. Additional G-Cloud services

- 30.1 The Buyer may require the Supplier to provide Additional Services. The Buyer doesn't have to buy any Additional Services from the Supplier and can buy services that are the same as or similar to the Additional Services from any third party.
- 30.2 If reasonably requested to do so by the Buyer in the Order Form, the Supplier must provide and monitor performance of the Additional Services using an Implementation Plan.

## 31. Collaboration

- 31.1 If the Buyer has specified in the Order Form that it requires the Supplier to enter into a Collaboration Agreement, the Supplier must give the Buyer an executed Collaboration Agreement before the Start date.
- 31.2 In addition to any obligations under the Collaboration Agreement, the Supplier must:
  - 31.2.1 work proactively and in good faith with each of the Buyer's contractors
  - 31.2.2 co-operate and share information with the Buyer's contractors to enable the efficient operation of the Buyer's ICT services and G-Cloud Services

## 32. Variation process

- 32.1 The Buyer can request in writing a change to this Call-Off Contract if it isn't a material change to the Framework Agreement/or this Call-Off Contract. Once implemented, it is called a Variation.
- 32.2 The Supplier must notify the Buyer immediately in writing of any proposed changes to their G-Cloud Services or their delivery by submitting a Variation request. This includes any changes in the Supplier's supply chain.
- 32.3 If Either Party can't agree to or provide the Variation, the Buyer may agree to continue performing its obligations under this Call-Off Contract without the Variation, or End this Call-Off Contract by giving 30 days notice to the Supplier.

## 33. Data Protection Legislation (GDPR)

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

Schedule 3: Collaboration agreement

Not used.

Schedule 4: Alternative clauses

Not used.

Schedule 5: Guarantee

Not used.

## Schedule 6: Glossary and interpretations

In this Call-Off Contract the following expressions mean:

Expression	Meaning
<b>Additional Services</b>	Any services ancillary to the G-Cloud Services that are in the scope of Framework Agreement Section 2 (Services Offered) which a Buyer may request.
<b>Admission Agreement</b>	The agreement to be entered into to enable the Supplier to participate in the relevant Civil Service pension scheme(s).
<b>Application</b>	The response submitted by the Supplier to the Invitation to Tender (known as the Invitation to Apply on the Digital Marketplace).
<b>Audit</b>	An audit carried out under the incorporated Framework Agreement clauses specified by the Buyer in the Order (if any).
<b>Background IPRs</b>	<p>For each Party, IPRs:</p> <ul style="list-style-type: none"> <li>owned by that Party before the date of this Call-Off Contract (as may be enhanced and/or modified but not as a consequence of the Services) including IPRs contained in any of the Party's Know-How, documentation and processes</li> <li>created by the Party independently of this Call-Off Contract, or</li> </ul> <p>For the Buyer, Crown Copyright which isn't available to the Supplier otherwise than under this Call-Off Contract, but excluding IPRs owned by that Party in Buyer software or Supplier software.</p>
<b>Buyer</b>	The contracting authority ordering services as set out in the Order Form.
<b>Buyer Data</b>	All data supplied by the Buyer to the Supplier including Personal Data and Service Data that is owned and managed by the Buyer.
<b>Buyer Personal Data</b>	The Personal Data supplied by the Buyer to the Supplier for purposes of, or in connection with, this Call-Off Contract.
<b>Buyer Representative</b>	The representative appointed by the Buyer under this Call-Off Contract.

<b>Buyer Software</b>	Software owned by or licensed to the Buyer (other than under this Agreement), which is or will be used by the Supplier to provide the Services.
<b>Call-Off Contract</b>	This call-off contract entered into following the provisions of the Framework Agreement for the provision of Services made between the Buyer and the Supplier comprising the Order Form, the Call-Off terms and conditions, the Call-Off schedules and the Collaboration Agreement.
<b>Charges</b>	The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under this Call-Off Contract.
<b>Collaboration Agreement</b>	An agreement, substantially in the form set out at Schedule 3, between the Buyer and any combination of the Supplier and contractors, to ensure collaborative working in their delivery of the Buyer's Services and to ensure that the Buyer receives end-to-end services across its IT estate.
<b>Commercially Sensitive Information</b>	Information, which the Buyer has been notified about by the Supplier in writing before the Start date with full details of why the Information is deemed to be commercially sensitive.
<b>Confidential Information</b>	Data, Personal Data and any information, which may include (but isn't limited to) any: <ul style="list-style-type: none"> <li>• information about business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above</li> <li>• other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential').</li> </ul>
<b>Control</b>	'Control' as defined in section 1124 and 450 of the Corporation Tax Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly.
<b>Controller</b>	Takes the meaning given in the GDPR.
<b>Crown</b>	The government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies carrying out functions on its behalf.



<b>Data Loss Event</b>	Event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Framework Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
<b>Data Protection Impact Assessment (DPIA)</b>	An assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data.
<b>Data Protection Legislation (DPL)</b>	Data Protection Legislation means: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy (iii) all applicable Law about the Processing of Personal Data and privacy including if applicable legally binding guidance and codes of practice issued by the Information Commissioner
<b>Data Subject</b>	Takes the meaning given in the GDPR
<b>Default</b>	<p>Default is any:</p> <ul style="list-style-type: none"> <li>• breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term)</li> <li>• other Default, negligence or negligent statement of the Supplier, of its Subcontractors or any Supplier Staff (whether by act or omission), in connection with or in relation to this Call-Off Contract</li> </ul> <p>Unless otherwise specified in the Framework Agreement the Supplier is liable to CCS for a Default of the Framework Agreement and in relation to a Default of the Call-Off Contract, the Supplier is liable to the Buyer.</p>
<b>Deliverable(s)</b>	The G-Cloud Services the Buyer contracts the Supplier to provide under this Call-Off Contract.
<b>Digital Marketplace</b>	The government marketplace where Services are available for Buyers to buy. ( <a href="https://www.digitalmarketplace.service.gov.uk/">https://www.digitalmarketplace.service.gov.uk/</a> )
<b>DPA 2018</b>	Data Protection Act 2018.
<b>Employment Regulations</b>	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) ('TUPE') which implements the Acquired Rights Directive.
<b>End</b>	Means to terminate; and Ended and Ending are construed accordingly.

<b>Environmental Information Regulations or EIR</b>	The Environmental Information Regulations 2004 together with any guidance or codes of practice issued by the Information Commissioner or relevant government department about the regulations.
<b>Equipment</b>	The Supplier's hardware, computer and telecoms devices, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from CCS or the Buyer) in the performance of its obligations under this Call-Off Contract.
<b>ESI Reference Number</b>	The 14 digit ESI reference number from the summary of the outcome screen of the ESI tool.
<b>Employment Status Indicator test tool or ESI tool</b>	The HMRC Employment Status Indicator test tool. The most up-to-date version must be used. At the time of drafting the tool may be found here: <a href="https://www.gov.uk/guidance/check-employment-status-for-tax">https://www.gov.uk/guidance/check-employment-status-for-tax</a>
<b>Expiry Date</b>	The expiry date of this Call-Off Contract in the Order Form.
<b>Force Majeure</b>	<p>A force Majeure event means anything affecting either Party's performance of their obligations arising from any:</p> <ul style="list-style-type: none"> <li>• acts, events or omissions beyond the reasonable control of the affected Party</li> <li>• riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare</li> <li>• acts of government, local government or Regulatory Bodies</li> <li>• fire, flood or disaster and any failure or shortage of power or fuel</li> <li>• industrial dispute affecting a third party for which a substitute third party isn't reasonably available</li> </ul> <p>The following do not constitute a Force Majeure event:</p> <ul style="list-style-type: none"> <li>• any industrial dispute about the Supplier, its staff, or failure in the Supplier's (or a Subcontractor's) supply chain</li> <li>• any event which is attributable to the wilful act, neglect or failure to take reasonable precautions by the Party seeking to rely on Force Majeure</li> <li>• the event was foreseeable by the Party seeking to rely on Force Majeure at the time this Call-Off Contract was entered into</li> <li>• any event which is attributable to the Party seeking to rely on Force Majeure and its failure to comply with its own business continuity and disaster recovery plans</li> </ul>
<b>Former Supplier</b>	A supplier supplying services to the Buyer before the Start date that are the same as or substantially similar to the Services. This also includes any Subcontractor or the Supplier (or any subcontractor of the Subcontractor).

<b>Framework Agreement</b>	The clauses of framework agreement RM1557.12 together with the Framework Schedules.
<b>Fraud</b>	Any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.
<b>Freedom of Information Act or FoIA</b>	The Freedom of Information Act 2000 and any subordinate legislation made under the Act together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to the legislation.
<b>G-Cloud Services</b>	The cloud services described in Framework Agreement Section 2 (Services Offered) as defined by the Service Definition, the Supplier Terms and any related Application documentation, which the Supplier must make available to CCS and Buyers and those services which are deliverable by the Supplier under the Collaboration Agreement.
<b>GDPR</b>	General Data Protection Regulation (Regulation (EU) 2016/679)
<b>Good Industry Practice</b>	Standards, practices, methods and process conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar undertaking in the same or similar circumstances.
<b>Government Procurement Card</b>	The government's preferred method of purchasing and payment for low value goods or services.
<b>Guarantee</b>	The guarantee described in Schedule 5.
<b>Guidance</b>	Any current UK government guidance on the Public Contracts Regulations 2015. In the event of a conflict between any current UK government guidance and the Crown Commercial Service guidance, current UK government guidance will take precedence.
<b>Implementation Plan</b>	The plan with an outline of processes (including data standards for migration), costs (for example) of implementing the services which may be required as part of Onboarding.
<b>Indicative test</b>	ESI tool completed by contractors on their own behalf at the request of CCS or the Buyer (as applicable) under clause 4.6.

<b>Information</b>	Has the meaning given under section 84 of the Freedom of Information Act 2000.
<b>Information security management system</b>	The information security management system and process developed by the Supplier in accordance with clause 16.1.
<b>Inside IR35</b>	Contractual engagements which would be determined to be within the scope of the IR35 Intermediaries legislation if assessed using the ESI tool.
<b>Insolvency event</b>	Can be: <ul style="list-style-type: none"> <li>• a voluntary arrangement</li> <li>• a winding-up petition</li> <li>• the appointment of a receiver or administrator</li> <li>• an unresolved statutory demand</li> <li>• a Schedule A1 moratorium</li> </ul>
<b>Intellectual Property Rights or IPR</b>	Intellectual Property Rights are: <ul style="list-style-type: none"> <li>• copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information</li> <li>• 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</li> <li>• all other rights having equivalent or similar effect in any country or jurisdiction</li> </ul>
<b>Intermediary</b>	For the purposes of the IR35 rules an intermediary can be: <ul style="list-style-type: none"> <li>• the supplier's own limited company</li> <li>• a service or a personal service company</li> <li>• a partnership</li> </ul> <p>It does not apply if you work for a client through a Managed Service Company (MSC) or agency (for example, an employment agency).</p>
<b>IPR claim</b>	As set out in clause 11.5.
<b>IR35</b>	IR35 is also known as 'Intermediaries legislation'. It's a set of rules that affect tax and National Insurance where a Supplier is contracted to work for a client through an Intermediary.
<b>IR35 assessment</b>	Assessment of employment status using the ESI tool to determine if engagement is Inside or Outside IR35.

<b>Know-How</b>	All ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the G-Cloud Services but excluding know-how already in the Supplier's or CCS's possession before the Start date.
<b>Law</b>	Any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply.
<b>LED</b>	Law Enforcement Directive (EU) 2016/680.
<b>Loss</b>	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 ' <b>Losses</b> ' will be interpreted accordingly.
<b>Lot</b>	Any of the 3 Lots specified in the ITT and Lots will be construed accordingly.
<b>Malicious Software</b>	Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
<b>Management Charge</b>	The sum paid by the Supplier to CCS being an amount of up to 1% but currently set at 0.75% of all Charges for the Services invoiced to Buyers (net of VAT) in each month throughout the duration of the Framework Agreement and thereafter, until the expiry or End of any Call-Off Contract.
<b>Management Information</b>	The management information specified in Framework Agreement section 6 (What you report to CCS).
<b>Material Breach</b>	Those breaches which have been expressly set out as a Material Breach and any other single serious breach or persistent failure to perform as required under this Call-Off Contract.
<b>Ministry of Justice Code</b>	The Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000.

<b>New Fair Deal</b>	The revised Fair Deal position in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 as amended.
<b>Order</b>	An order for G-Cloud Services placed by a contracting body with the Supplier in accordance with the ordering processes.
<b>Order Form</b>	The order form set out in Part A of the Call-Off Contract to be used by a Buyer to order G-Cloud Services.
<b>Ordered G-Cloud Services</b>	G-Cloud Services which are the subject of an order by the Buyer.
<b>Outside IR35</b>	Contractual engagements which would be determined to not be within the scope of the IR35 intermediaries legislation if assessed using the ESI tool.
<b>Party</b>	The Buyer or the Supplier and ‘Parties’ will be interpreted accordingly.
<b>Personal Data</b>	Takes the meaning given in the GDPR.
<b>Personal Data Breach</b>	Takes the meaning given in the GDPR.
<b>Processing</b>	Takes the meaning given in the GDPR.
<b>Processor</b>	Takes the meaning given in the GDPR.
<b>Prohibited act</b>	<p>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:</p> <ul style="list-style-type: none"> <li>• induce that person to perform improperly a relevant function or activity</li> <li>• reward that person for improper performance of a relevant function or activity</li> <li>• commit any offence: <ul style="list-style-type: none"> <li>○ under the Bribery Act 2010</li> <li>○ under legislation creating offences concerning Fraud</li> <li>○ at common Law concerning Fraud</li> <li>○ committing or attempting or conspiring to commit Fraud</li> </ul> </li> </ul>
<b>Project Specific IPRs</b>	Any intellectual property rights in items created or arising out of the performance by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call-Off Contract including databases, configurations, code, instructions, technical

	documentation and schema but not including the Supplier's Background IPRs.
<b>Property</b>	Assets and property including technical infrastructure, IPRs and equipment.
<b>Protective Measures</b>	Appropriate technical and organisational measures which may include: pseudonymisation and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.
<b>PSN or Public Services Network</b>	The Public Services Network (PSN) is the government's high-performance network which helps public sector organisations work together, reduce duplication and share resources.
<b>Regulatory body or bodies</b>	Government departments and other bodies which, whether under statute, codes of practice or otherwise, are entitled to investigate or influence the matters dealt with in this Call-Off Contract.
<b>Relevant person</b>	Any employee, agent, servant, or representative of the Buyer, any other public body or person employed by or on behalf of the Buyer, or any other public body.
<b>Relevant Transfer</b>	A transfer of employment to which the employment regulations applies.
<b>Replacement Services</b>	Any services which are the same as or substantially similar to any of the Services and which the Buyer receives in substitution for any of the services after the expiry or Ending or partial Ending of the Call-Off Contract, whether those services are provided by the Buyer or a third party.
<b>Replacement supplier</b>	Any third-party service provider of replacement services appointed by the Buyer (or where the Buyer is providing replacement Services for its own account, the Buyer).
<b>Security management plan</b>	The Supplier's security management plan developed by the Supplier in accordance with clause 16.1.
<b>Services</b>	The services ordered by the Buyer as set out in the Order Form.
<b>Service data</b>	Data that is owned or managed by the Buyer and used for the G-Cloud Services, including backup data.

<b>Service definition(s)</b>	The definition of the Supplier's G-Cloud Services provided as part of their Application that includes, but isn't limited to, those items listed in Section 2 (Services Offered) of the Framework Agreement.
<b>Service description</b>	The description of the Supplier service offering as published on the Digital Marketplace.
<b>Service Personal Data</b>	The Personal Data supplied by a Buyer to the Supplier in the course of the use of the G-Cloud Services for purposes of or in connection with this Call-Off Contract.
<b>Spend controls</b>	The approval process used by a central government Buyer if it needs to spend money on certain digital or technology services, see <a href="https://www.gov.uk/service-manual/agile-delivery/spend-controls-check-if-you-need-approval-to-spend-money-on-a-service">https://www.gov.uk/service-manual/agile-delivery/spend-controls-check-if-you-need-approval-to-spend-money-on-a-service</a>
<b>Start date</b>	The Start date of this Call-Off Contract as set out in the Order Form.
<b>Subcontract</b>	Any contract or agreement or proposed agreement between the Supplier and a subcontractor in which the subcontractor agrees to provide to the Supplier the G-Cloud Services or any part thereof or facilities or goods and services necessary for the provision of the G-Cloud Services or any part thereof.
<b>Subcontractor</b>	Any third party engaged by the Supplier under a subcontract (permitted under the Framework Agreement and the Call-Off Contract) and its servants or agents in connection with the provision of G-Cloud Services.
<b>Subprocessor</b>	Any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract.
<b>Supplier</b>	The person, firm or company identified in the Order Form.
<b>Supplier Representative</b>	The representative appointed by the Supplier from time to time in relation to the Call-Off Contract.
<b>Supplier staff</b>	All persons employed by the Supplier together with the Supplier's servants, agents, suppliers and subcontractors used in the performance of its obligations under this Call-Off Contract.
<b>Supplier terms</b>	The relevant G-Cloud Service terms and conditions as set out in the Terms and Conditions document supplied as part of the Supplier's Application.



<b>Term</b>	The term of this Call-Off Contract as set out in the Order Form.
<b>Variation</b>	This has the meaning given to it in clause 32 (Variation process).
<b>Working Days</b>	Any day other than a Saturday, Sunday or public holiday in England and Wales.
<b>Year</b>	A contract year.

## Schedule 7: GDPR Information

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

### Annex 1: Processing Personal Data

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

1.1 The contact details of the Buyer's Data Protection Officer are: Chris Gooday, Information Governance Manager, [chris.gooday@nhs.net](mailto:chris.gooday@nhs.net)

1.2 The contact details of the Supplier's Data Protection Officer are: Evalian Limited, via [informationsecurity@commify.com](mailto:informationsecurity@commify.com)

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

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

Descriptions	Details
Identity of Controller for each Category of Personal Data	<p><b>The Buyer is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with paragraph 2-15 Framework Agreement Schedule 4 (Where the Party is a Controller and the other Party is Processor) and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"><li>Information of Buyer's users of the Services (i.e. users mobile number)</li></ul>
Duration of the Processing	The Processing will continue for the full term of the contract
Nature and purposes of the Processing	Personal Data will be Processed for the purpose of providing the Services in accordance with the terms of the Contract.
Type of Personal Data	The nature of the application requires the use of personal phone numbers to deliver SMS messages.

Categories of Data Subject	Processing may involve Personal Data about anyone who is a member of the NHS Pension Scheme
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under Union or Member State law to preserve that type of data	Data is deleted 2 years from the date an SMS message is sent.

## Annex 2: Joint Controller Agreement

Not used.

# Part C – Supplier Terms and Conditions

## Terms and Conditions

### 1 Definitions and interpretation

#### 1.1 In this Agreement:

the 'Supplier' shall mean Commify UK Limited (trading as Esendex) a company registered in England and Wales with registration number 04217280 whose registered office address is at 20 Wollaton Street, Nottingham NG 1 5FW; and

the 'Customer' means the entity purchasing business communication services from the Supplier.

1.2 The Customer agrees that if it purchases any business communication services from the Supplier, the Customer shall be legally bound by the terms of this Agreement.

1.3 The definitions and rules of interpretation set out in Schedule 1 shall apply to our Agreement.

#### 1.4 In our Agreement:

1.4.1 each Order entered into by the Customer and the Supplier shall form a separate agreement, incorporating these Terms and Conditions together with the Data Protection Addendum and the Policies (**our Agreement**);

1.4.2 in the event of any conflict in respect of the provisions of our Agreement the following order of priority shall prevail (in descending order of priority):

- (a) the Order;
- (b) Data Protection Addendum;
- (c) the Policies; and
- (d) the Terms and Conditions; and

1.4.3 subject to the order of priority between documents in clause 1.4.2, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.

1.5 Any obligation of the Supplier under our Agreement to comply or ensure compliance by any person or the Services with any law shall be limited to compliance only with laws as generally applicable to businesses and to providers of software as a service and communications solutions. Such obligations shall not be construed to create any obligation on the Supplier (or anyone acting on its behalf) or any part of the Services to comply with any laws or regulations which apply solely to specific commercial or other activities (such as insurance, legal advice or banking or other professional services) or which apply solely to a specific commercial or noncommercial sector (or part thereof) (such as the public, legal, accountancy, actuarial, insurance, banking or financial service sectors).

## **2 Rights of use**

- 1.6 Upon Order Acceptance and subject to the terms of our Agreement, the Supplier grants the Customer a non-exclusive, non-transferable, personal right to use each Subscribed Service during the Subscribed Service Period for the Permitted Purpose.
- 1.7 The Customer shall:
- 1.7.1 ensure that only Authorised Users use the Subscribed Services and that such use is at all times in accordance with our Agreement;
  - 1.7.2 ensure that Authorised Users are, at all times whilst they have access to the Subscribed Services, the employees or contractors of the Customer or the Authorised Affiliates;
  - 1.7.3 keep a list of all Authorised Users;
  - 1.7.4 ensure Authorised User accounts cannot be shared or used by more than one individual at the same time;
  - 1.7.5 be liable for the acts and omissions of the Authorised Users and the Authorised Affiliates as if they were its own;
  - 1.7.6 only provide Authorised Users with access to the Services via the access method provided by the Supplier and shall not provide access to (or permit access by) anyone other than an Authorised User; and
  - 1.7.7 procure that each Authorised User (and each Authorised Affiliate) is aware of, and complies with, the obligations and restrictions imposed on the Customer under our Agreement, including all obligations and restrictions relating to the Supplier's Confidential Information.
- 1.8 The Customer warrants and represents that it, and all Authorised Users and all others acting on its or their behalf (including systems administrators) shall ensure:
- 1.8.1 their password for any Subscribed Services is unique and not reused in any other context; and
  - 1.8.2 their password or access details for any Subscribed Service are kept confidential and not shared with any third party.
- 1.9 The Customer shall (and shall ensure all Authorised Affiliates and Authorised Users shall) at all times comply with the Acceptable Use Policy and all other provisions of our Agreement.
- 1.10 The Customer acknowledges that use of the Subscribed Services is at all times subject to the Customer's compliance with our Agreement and the requirements identified in our Agreement.

## **3 Testing and Support**

- 1.11 If applicable, the Supplier shall notify the Customer when a Subscribed Service (or an element of a Subscribed Service) is ready to be tested and the Supplier shall give the Customer instructions on how to complete such testing and the time frame within which such testing must be completed. Unless otherwise agreed in a Statement of Work, the Customer shall

have 5 Business Days to complete such testing and report any fault(s) that the Customer finds to the Supplier (**Testing Period**);

1.12 If the Customer:

1.12.1 does not report any fault(s) to the Supplier within the Testing Period referred to in clause 3.1, the Customer will be deemed to have accepted the Subscribed Service; and

1.12.2 does report any fault(s) to the Supplier within the Testing Period, the Customer shall provide the Supplier with all information about the fault(s) to enable the Supplier to take remedial action and, provided that the Customer gives the Supplier enough information, the Supplier shall endeavour to fix any fault(s) within a reasonable time (and in any event within 30 days). Once the Supplier has fixed identified faults or if the Supplier cannot locate and verify any such fault(s), the Supplier shall notify the Customer and the Customer shall carry out testing of the Subscribed Service within 5 Business Days unless otherwise agreed by the parties.

1.13 If the Customer fails to test the relevant Subscribe Service in accordance with clauses 3.1 and 3.2, the Customer acknowledges that:

1.13.1 if the Subscribed Services can be provided notwithstanding the failure of the Customer to test the Subscribed Service, the Subscribed Service Period will commence and the Charges will become payable;

1.13.2 the availability of such Subscribed Service may be delayed and the Supplier shall have no liability in relation to such delay; and

1.13.3 any additional work carried out by the Supplier which is due to the Customer's failure to comply with clause 3.1, clause 3.2 or clause 7 shall incur charges in accordance with the Supplier's applicable rate card.

1.14 Support Services shall be available during the Support Hours for each Subscribed Service to the Customer for the duration of the respective Subscribed Service Period.

1.15 The Supplier will use reasonable endeavours to notify the Customer in advance of scheduled maintenance but the Customer acknowledges that it may receive no advance notification for downtime caused by Force Majeure or for other emergency maintenance.

#### **4 Changes to services and terms**

1.16 The Supplier may update the documents referred to in clause 1.4.2 or other documents referred to in any part of our Agreement (excluding in each case the Order) from time to time and shall make such updated documents available at [www.esendex.com](http://www.esendex.com).

1.17 In the event that the Customer reasonably believes that any Update materially impacts it negatively in any manner it may by notice elect to terminate our Agreement in respect of all impacted Subscribed Services on not less than 10 Business Days prior written notice and notifies the Supplier at the time of exercising such right of the negative impact which has caused it to exercise this right.

1.18 The Customer acknowledges that the Supplier shall be entitled to modify the features and functionality of the Services. the Supplier shall use reasonable endeavours to ensure that

any such modification does not materially adversely affect the use of the relevant Subscribed Service(s) by the Supplier's customers generally.

- 1.19 The Supplier may replace virtual mobile numbers from time to time on provision of at least 90 days' prior written notice.

## **5 Fees and Credit(s)**

- 1.20 The Subscription Fee and any other charges (including expenses) expressly agreed between the parties in writing shall be paid by the Customer at the rates and in the manner described in the Order.
- 1.21 The Customer acknowledges that if a Minimum Monthly Volume is set out in an Order, the respective Fees have been calculated in accordance with such Minimum Monthly Volume. If the volume of Transactions completed in any month by the Customer falls below the Minimum Monthly Volume, the Supplier shall be entitled to charge the Customer such higher per Transaction Fees as would be payable in relation to such lower volume and invoice the Customer for any shortfall.
- 1.22 If an Order sets out a minimum monthly charge (**Minimum Monthly Charge**), such Minimum Monthly Charge will be payable each month of the Subscribed Service Period irrespective of whether Transaction volumes would have incurred Fees amounting to the Minimum Monthly Charge. If Transaction volumes exceed the Minimum Monthly Charge, such additional Fees shall be payable in addition to the Minimum Monthly Charge.
- 1.23 SMS message fees are charged on a per SMS basis. Each SMS is a set of systematized textual and numeric characters (text) of up to 160 characters when using the GSM alphabet. Some symbols constitute more than one character (as more particularly set out at <https://support.esendex.co.uk/sms/long-message-can-send/>). If message text exceeds 160 characters, it shall be charged as more than 1 SMS. If the GSM alphabet is not used, the character limit for 1 SMS shall be less than 160 characters.
- 1.24 Fees shall be incurred for each Transaction submitted whether or not such Transaction is received by the intended recipient of a Transaction.
- 1.25 In the event the Customer's account is compromised or the subject of a security breach, the Customer shall be liable for the Fees incurred for all Transactions submitted unless the Customer can demonstrate that such compromise or security breach was the fault or responsibility of the Supplier.
- 1.26 Unless as otherwise set out in an Order, Fees shall be paid by direct debit within 14 days of the date of an invoice.
- 1.27 The Fees are exclusive of VAT which shall be payable by the Customer at the rate and in the manner prescribed by law.
- 1.28 The Supplier shall have the right to charge interest on overdue invoices at the rate of 4% per year above the base rate of the Bank of England, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment.



- 1.29 The Supplier may increase the Fees at any time to reflect an increase in the Supplier's costs. The Supplier shall provide 30 days prior notice of any increase in Fees to post-pay Customers (being those Customers paying the Fees by invoice following use of the Services).
- 1.30 To the extent our Agreement terminates or expires (other than due to termination by the Customer under clause 16.2) the Customer shall not be entitled to any refund or discount of Fees paid for any parts of any month during which the Services cease to be provided.
- 1.31 Any Transaction credit purchased or Transaction balance added by a Customer shall be non-refundable and shall expire 12 months after the date purchased by the Customer unless otherwise set out in an Order.
- 1.32 Any Transaction credits included as part of a monthly package shall expire at the end of the relevant month.
- 1.33 It is the Customer's responsibility to ensure it has sufficient Transaction credit or balance and the Supplier accepts no liability in the event the Customer has insufficient Transaction credit or balance to meet the Customer's requirements.

## **6 Warranties**

- 1.34 Subject to the remainder of this clause 6, the Supplier warrants that:
  - 1.34.1 each Subscribed Service shall operate materially in accordance with its Description when used in accordance with our Agreement during the relevant Subscribed Service Period; and
  - 1.34.2 it will provide each of the Services with reasonable care and skill.
- 1.35 The Customer acknowledges that clause 6.1 does not apply to Trial Services or to Support Services provided in connection with the same. Without prejudice to the Supplier's obligations under our Agreement in respect of Protected Data, Trial Services and Support Services provided in connection with the same are provided 'as is' and without warranty to the maximum extent permitted by law.
- 1.36 The Services may be subject to delays, interruptions, errors or other problems resulting from use of the internet or public electronic communications networks used by the parties or third parties. The Customer acknowledges that such risks are inherent in communications services and that the Supplier shall have no liability for any such delays, interruptions, errors or other problems.
- 1.37 The warranties in clause 6.1 are subject to the limitations set out in clause 13 and shall not apply to the extent that any error in the Services arises as a result of:
  - 1.37.1 the acts or omissions of the recipient of any Transaction;
  - 1.37.2 use of any Services with other software or services or on equipment with which it is incompatible (unless the Supplier recommended or required the use of that other software or service or equipment);
  - 1.37.3 any act by any third party (including hacking or the introduction of any virus or malicious code);

- 1.37.4 any modification of Services (other than that undertaken by the Supplier or at its direction); or
- 1.37.5 any breach of our Agreement by the Customer (or by any Authorised Affiliate or Authorised User).
- 1.38 The Customer acknowledges that the Supplier has no liability or obligations (howsoever arising whether under contract, tort, in negligence or otherwise) in relation to:
  - 1.38.1 the content of Transactions;
  - 1.38.2 the Subscribed Services being free of minor errors or defects; or
  - 1.38.3 the Subscribed Services being compatible with any other software or service or with any hardware or equipment except to the extent expressly referred to as compatible in the Order.
- 1.39 Other than as set out in this clause 6, and subject to clause 13.2, all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

## **7 Customer's responsibilities**

- 1.40 The Customer shall (and shall ensure all Authorised Affiliates and Authorised Users shall) at all times comply with all applicable laws, rules and regulations relating to the use or receipt of the Services, including laws relating to privacy, data protection and use of systems and communications.
- 1.41 The Customer shall at all times comply with the Policies and all other provisions of our Agreement.
- 1.42 The Customer shall:
  - 1.42.1 co-operate with the Supplier in all matters relating to the Services;
  - 1.42.2 provide, for the Supplier and its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises and other facilities as reasonably required by the Supplier or any of them;
  - 1.42.3 provide, in a timely manner, such information as the Supplier may reasonably require in order to provide the Services, and ensure that such information is accurate in all material respects;
  - 1.42.4 provide accurate Customer representative and contact details (including email addresses) to the Supplier and ensure any changes are notified to the Supplier promptly;
  - 1.42.5 provide the Customer Data in the format set out in a Statement of Work or otherwise agreed in writing between the parties;
  - 1.42.6 provide the Supplier with at least 5 Business Days prior notice of any physical or connectivity changes the Customer is undertaking which may affect the Subscribed Services;

- 1.42.7 provide the Supplier with information if requested by a Network Operator and/or Regulator relating to a Customer's use of the Subscribed Services; and
- 1.42.8 ensure the Customer's systems are subject to security controls, in accordance with good industry practice, to ensure the security and integrity of access to the Services and the Supplier's platform.
- 1.43 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation any fines or other penalties imposed on the Supplier (or any of the Supplier's Affiliates) by a Network Operator, court costs and reasonable legal fees) arising out of or in connection with the Customer's breach of this Agreement or the Policies or any claim by a third party in connection with the content of a Transaction, provided that:
  - 1.43.1 the Customer is given prompt notice of any such claim;
  - 1.43.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - 1.43.3 the Customer is given sole authority to defend or settle the claim.
- 1.44 Clauses 7.1 to 7.4 (inclusive) shall survive termination or expiry of our Agreement.

## **8 Intellectual property**

- 1.45 All Intellectual Property Rights in and to the Services belong to and shall remain vested in the Supplier or the relevant third party owner. To the extent that the Customer, any of its Affiliates or any person acting on its or their behalf acquires any Intellectual Property Rights in the Services, the Customer shall assign or procure the assignment of such Intellectual Property Rights with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to the Supplier or such third party as the Supplier may elect. The Customer shall execute all such documents and do such things as the Supplier may consider necessary to give effect to this clause 8.1.
- 1.46 The Customer may be able to store or transmit Customer Data using one or more Subscribed Service and the Subscribed Services may interact with Customer Systems. The Customer hereby grants a royalty-free, non-transferable, non-exclusive licence for the Supplier (and each of its direct and indirect sub-contractors) to use, copy and otherwise utilise the Customer Data and Customer Systems to the extent necessary to perform or provide the Services or to exercise or perform the Supplier's rights, remedies and obligations under our Agreement.
- 1.47 Except for the rights expressly granted in our Agreement, the Customer, any Customer Affiliate and their direct and indirect sub-contractors, shall not acquire in any way any title, rights of ownership, or Intellectual Property Rights of whatever nature in the Services and no Intellectual Property Rights of either party are transferred or licensed as a result of our Agreement.
- 1.48 The Supplier shall indemnify the Customer for any losses, damages, liability, costs and expenses (including professional fees) incurred by it as a result of any action, demand or claim that the Customer's use of or access to the Services infringes the Intellectual Property Rights of any third party (an **IPR Claim**) provided that the Customer:

- 1.48.1 notifies the Supplier in writing as soon as reasonably practicable;
  - 1.48.2 does not make any admission of liability or agree any settlement or compromise of the IPR Claim without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed); and
  - 1.48.3 lets the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim.
- 1.49 If any IPR Claim is made or is reasonably likely to be made, the Supplier may at its option:
- 1.49.1 procure for the Customer the right to continue receiving the relevant Services; or
  - 1.49.2 re-perform the infringing part of the Services so as to avoid the infringement or alleged infringement, provided the Services remain in conformance to the Description.
- 1.50 In the event of any IPR Claim the Supplier may elect to terminate our Agreement immediately by written notice and promptly refund to the Customer on a pro-rata basis for any unused proportion of Fees paid in advance.
- 1.51 The Supplier shall have no liability or obligation under this clause 8 in respect of any IPR Claim which arises in whole or in part from:
- 1.51.1 any modification of the Services (or any part) without the Supplier's express written approval;
  - 1.51.2 any Customer Data;
  - 1.51.3 any breach of our Agreement by the Customer;
  - 1.51.4 installation or use of the Subscribed Services (or any part) otherwise than in accordance with our Agreement; or
  - 1.51.5 installation or use of the Subscribed Services (or any part) in combination with any software, hardware or data that has not been supplied or expressly authorised by the Supplier.
- 1.52 This clause 8 shall survive the termination or expiry of our Agreement.

## **9 Customer Systems and Customer Data**

- 1.53 Customer Data shall at all times remain the property of the Customer.
- 1.54 Except to the extent the Supplier has direct obligations under data protection laws, the Customer acknowledges that the Supplier has no control over any Customer Data hosted as part of the provision of the Subscribed Services and may not actively monitor the content of the Customer Data. The Customer shall ensure (and is exclusively responsible for) the accuracy, quality, integrity and legality of the Customer Data and that its use (including use in connection with the Subscribed Service) complies with all applicable laws and Intellectual Property Rights.
- 1.55 The Supplier makes use of automated fraud detection on receipt of the Customer Data to protect end-users from fraudulent or otherwise deceptive conduct. The Supplier may audit

Customer Data in relation to all Trial Services, and in relation to the Subscribed Services not being Trial Services in the case of any atypical activity.

- 1.56 If the Supplier becomes aware that any Customer Data may not comply with the Acceptable Use Policy or any other part of our Agreement the Supplier shall have the right to permanently delete or otherwise remove or suspend access to any Customer Data which is suspected of being in breach of any of the foregoing from the Services and/or disclose Customer Data to law enforcement authorities (in each case without the need to consult the Customer). Where reasonably practicable and lawful the Supplier shall notify the Customer before taking such action.

## **10 Confidentiality and security of Customer Data**

- 1.57 The Supplier shall maintain the confidentiality of the Customer Data and shall not without the prior written consent of the Customer or in accordance with our Agreement, disclose or copy the Customer Data other than as necessary for the performance of the Services or its express rights and obligations under our Agreement.

- 1.58 The Supplier:

1.58.1 undertakes to disclose the Customer Data only to those of its officers, employees, agents, contractors and direct and indirect sub-contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under our Agreement or as otherwise reasonably necessary for the provision or receipt of the Services, and

1.58.2 shall be responsible to the Customer for any acts or omissions of any of the persons referred to in clause 10.2.1 in respect of the confidentiality and security of the Customer Data as if they were the Supplier's own.

- 1.59 The provisions of this clause 10 shall not apply to information which:

1.59.1 is or comes into the public domain through no fault of the Supplier, its officers, employees, agents or contractors;

1.59.2 is lawfully received by the Supplier from a third party free of any obligation of confidence at the time of its disclosure;

1.59.3 is independently developed by the Supplier (or any of its Affiliates or any person acting on its or their behalf), without access to or use of such information; or

1.59.4 is required by law, by court or governmental or regulatory order to be disclosed, provided that clauses 10.3.1 to 10.3.3 (inclusive) shall not apply to Protected Data.

- 1.60 This clause 10 shall survive the termination or expiry of our Agreement for a period of five years.

- 1.61 To the extent any Customer Data is Protected Data, the Supplier shall ensure that such Customer Data may be disclosed or used only to the extent such disclosure or use does not conflict with any of the Supplier's obligations under Schedule 3. Clauses 10.1 to 10.4 (inclusive) are subject to this clause 10.5.

- 1.62 If the Customer receives payment related Services from the Supplier, the Supplier will handle cardholder data in accordance with the Supplier's PCI charter at <https://www.esendex.co.uk/pci-charter/>.

## **11 Supplier's Confidential Information**

- 1.63 The Customer shall maintain the confidentiality of the Supplier's Confidential Information and shall not disclose, use, exploit, copy or modify the Supplier's Confidential Information (or permit others to do so) other than as necessary for the performance of its express rights and obligations under our Agreement.
- 1.64 The Customer undertakes to:
- 1.64.1 disclose the Supplier's Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under our Agreement;
  - 1.64.2 procure that such persons are made aware of and agree in writing to observe the obligations in this clause 11; and
  - 1.64.3 be responsible for the acts and omissions of those third parties referred to in this clause 11.2 as if they were the Customer's own acts or omissions.
- 1.65 The provisions of this clause 11 shall not apply to information which:
- 1.65.1 is or comes into the public domain through no fault of the Customer, its officers, employees, agents or contractors;
  - 1.65.2 is lawfully received by the Customer from a third party free of any obligation of confidence at the time of its disclosure;
  - 1.65.3 is independently developed by the Customer, without access to or use of such information; or
  - 1.65.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the Customer, where possible, notifies the Supplier at the earliest opportunity before making any disclosure.
- 1.66 This clause 11 shall survive the termination or expiry of our Agreement for a period of five years.

## **12 Monitoring compliance**

- 1.67 The Supplier may monitor, collect, store and use information on the use and performance of the Services (including Customer Data) to detect threats or errors to the Services and/or Supplier's operations and for the purposes of the further development and improvement of the Supplier's services, provided that such activities at all times comply with the Privacy Policy and Schedule 4.

## **13 Limitation of liability**

- 1.68 The extent of each party's liability under or in connection with our Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused

by negligence or misrepresentation or under any indemnity) shall be as set out in this clause 13.

1.69 Notwithstanding any other provision of our Agreement, neither party's liability shall be limited in any way in respect of the following:

1.69.1 death or personal injury caused by negligence;

1.69.2 fraud or fraudulent misrepresentation;

1.69.3 any other losses which cannot be excluded or limited by applicable law; or

1.69.4 the Customer's liability shall not be limited in any way in respect of any claim under the indemnity in clause 7.4 in respect of any liability incurred by the Supplier in relation to a fine or other penalty imposed on it by a Network Operator.

1.70 Subject to clause 13.2, the total aggregate liability of each party howsoever arising under or in connection with our Agreement shall not exceed the lesser of:

1.70.1 an amount equal to three times the Fees for all Services paid to the Supplier in the 12-month period immediately preceding the first incident giving rise to any claim under our Agreement; or

1.70.2 £50,000.

1.71 Subject to clause 13.2, neither party shall be liable for consequential, indirect or special losses.

1.72 Subject to clause 13.2, neither party shall be liable for any of the following (whether direct or indirect):

1.72.1 loss of profit;

1.72.2 destruction, loss of use or corruption of data;

1.72.3 loss of opportunity;

1.72.4 loss of savings, discount or rebate (whether actual or anticipated); and/or

1.72.5 harm to reputation or loss of goodwill.

1.73 To the maximum extent permitted by law, the Supplier shall not be liable (under any legal theory, including negligence) for any breach, delay or default in the performance of our Agreement to the extent the same (or the circumstances giving rise to the same) arises or was contributed to by any Relief Event.

1.74 This clause 13 shall survive the termination or expiry of our Agreement.

## **14 Suspension**

1.75 The Supplier may suspend access to the Subscribed Services on reasonable notice if:

1.75.1 the Supplier suspects that there has been any misuse of the Subscribed Services or breach of our Agreement;

1.75.2 a Network Operator or Regulator requires it;

1.75.3 the Customer significantly exceeds its usual volumes of Transactions and has not provided the Supplier with reasonable prior notice; or

1.75.4 the Customer fails to pay any sums due to the Supplier by the due date for payment.

1.76 Where the reason for the suspension is suspected misuse of the Services or breach of our Agreement, without prejudice to its rights under clause 16, the Supplier will take steps to investigate the issue and may restore or continue to suspend access at its discretion.

1.77 In relation to suspensions under clause 14.1.4, access to the Services will be restored promptly after the Supplier receives payment in full and cleared funds.

1.78 Fees shall remain payable during any period of suspension notwithstanding that the Customer or Authorised Affiliates may not have access to the Services.

## **15 Renewals**

1.79 Subject to clause 15.2, on expiry of each Subscribed Service Period, the Subscribed Services shall continue and automatically renew for further consecutive periods of the same duration as the initial Subscribed Service Period (each a **Renewal**). This clause 15.1 shall not apply in respect of Trial Services (which shall not renew unless otherwise expressly stated in the Order).

1.80 If either party does not wish for the Subscribed Services to renew it may cause the Subscribed Service to expire by notice provided such notice is served at least 28 days prior to the next Renewal commencing. If notice is not served within the timeframes set out in this clause 15.2, the Subscribed Service shall renew in accordance with clause 15.1.

## **16 Term and termination**

1.81 Our Agreement shall come into force on Order Acceptance and, unless terminated earlier in accordance with its terms, shall continue for the duration of all Subscribed Service Periods.

1.82 Either party may terminate our Agreement immediately at any time by giving notice in writing to the other party if:

1.82.1 the other party commits a material breach of our Agreement and such breach is not remediable;

1.82.2 the other party commits a material breach of our Agreement which is not remedied within 20 Business Days of receiving written notice of such breach; or

1.82.3 the other party has failed to pay any amount due under our Agreement on the due date and such amount remains unpaid within 20 Business Days after the other party has received notification that the payment is overdue; or

1.82.4 the other party:

(a) stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;



- (b) is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the non-defaulting party reasonably believes that to be the case;
- (c) becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- (d) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- (e) has a resolution passed for its winding up;
- (f) has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- (g) is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
- (h) has a freezing order made against it; or
- (i) is subject to any events or circumstances analogous to those in clauses 16.2.4(a) to 16.2.4(h) in any jurisdiction.

1.83 The Supplier may terminate or suspend the provision of Trial Services (and all related Support Services) at any time with or without notice.

1.84 Any breach by the Customer of clause 7 or clause 9 shall be deemed a material breach of our Agreement.

## **17 Consequences of termination**

1.85 Immediately on termination or expiry of our Agreement (for any reason), the rights granted by the Supplier under our Agreement shall terminate and the Customer shall (and shall procure that each Authorised Affiliate shall):

1.85.1 stop using the Services; and

1.85.2 pay all Fees due and payable.

1.86 Termination or expiry of our Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of our Agreement that is expressly or by implication intended to continue beyond termination.

## **18 Freedom of Information**

1.87 'Information' and 'Request for Information' shall have the meanings set out in the Freedom of Information Act 2000 ('FIA 2000') or the Environmental Information Regulations 2004, SI 2004/3391 ('EI Regs 2004') as relevant.

1.88 The Supplier acknowledges that the Customer may be subject to the requirements of the FIA 2000 and the EI Regs 2004 and shall promptly and fully assist and cooperate with the Customer to enable the Customer to comply with its obligations in respect of those requirements.

1.89 Where the Supplier receives a Request for Information it shall:

1.89.1 inform the Customer of its receipt within 5 Business Days of its receipt; and

1.89.2 provide a copy of the Request for Information to Customer, together with all other information as Supplier considers reasonably relevant to the request within 10 working days of receipt of the Request for Information by Supplier.

1.90 The Supplier shall not respond directly to a Request for Information unless expressly authorised to do so by the Customer in writing.

1.91 While the Customer may, if practicable and appropriate, consult with the Supplier in relation to whether any information relating to the Supplier or this Agreement should be disclosed as part of a Request for Information, the Customer shall ultimately be responsible for determining in its absolute discretion whether any Information will be disclosed and whether any exemptions apply to the disclosure of the Information.

## **19 General**

1.92 Our Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, understandings and arrangements between them in respect of its subject matter, whether in writing or oral.

1.93 Each party acknowledges that it has not entered into our Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in our Agreement.

1.94 Any notice given by a party under our Agreement shall be in writing and sent to the address or email address set out in an Order or notified by a party to the other party.

1.95 Clause 19.3 does not apply to notices given in legal proceedings.

1.96 No variation of our Agreement shall be valid or effective unless it is:

1.96.1 an Update made in accordance with our Agreement; or

1.96.2 made in writing, refers to our Agreement and is duly signed or executed by, or on behalf of, each party.

1.97 Except as expressly provided in our Agreement, the Supplier may at any time assign, sub-contract, sub-licence (including by multi-tier), transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under our Agreement.

1.98 Except as expressly permitted by our Agreement, the Customer shall not assign, transfer, sub-contract, sub-licence, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under our Agreement (including the licence rights granted), in whole or in part, without the Supplier's prior written consent.

1.99 The parties are independent and are not partners or principal and agent and our Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither party shall have, nor shall represent that it has, any authority to make any commitments on the other party's behalf.

1.100 If any provision of our Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of our Agreement shall not be affected.

- 1.101 If any provision of our Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 1.102 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under our Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 1.103 No single or partial exercise of any right, power or remedy provided by law or under our Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.
- 1.104 A waiver of any term, provision, condition or breach of our Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.
- 1.105 A person who is not a party to our Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.
- 1.106 Our Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 1.107 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, our Agreement, its subject matter or formation (including non-contractual disputes or claims).

## SCHEDULE 1

### DEFINITIONS AND INTERPRETATION

1 In our Agreement:

<b>Affiliate</b>	1 means, in respect of any entity, any entity that directly or indirectly controls, is controlled by or is under common control with that entity within the meaning set out in section 1124 of the Corporation Tax Act 2010;
<b>Authorised Affiliates</b>	2 means, in respect of the relevant Subscribed Service, the Affiliates of the Customer (if any) identified in the Order as Authorised Affiliates in respect of that Subscribed Service;
<b>Authorised Users</b>	3 means, in respect of the relevant Subscribed Service, the users authorised by the Customer to use that Subscribed Service in accordance with the terms of our Agreement;
<b>Business Day</b>	4 means a day other than a Saturday, Sunday or bank or public holiday in England;
<b>Customer</b>	5 has the meaning given in the relevant Order;
<b>Customer Data</b>	6 means all data (in any form) that is provided to the Supplier or uploaded or hosted on any part of any Subscribed Service by the Customer or contained in a Transaction;
<b>Customer Systems</b>	7 means all software and systems used by or on behalf of the Customer or the Customer's Affiliates in connection with the provision or receipt any of the Services or that the Services otherwise, link, inter-operate or interface with or utilise (in each case whether directly or indirectly);
<b>Data Protection Addendum</b>	8 means the data protection addendum identifying certain respective rights and obligations of the parties' in respect of personal data and privacy under our Agreement (as Updated from time to time), set out at Schedule 4;
<b>Description</b>	9 means the description of the relevant Subscribed Service which as at Order Acceptance is the latest version available at <a href="http://www.esendex.co.uk">www.esendex.co.uk</a> and as set out in any Statement of Work;

<b>Fees</b>	10 means the Subscription Fees together with any other amounts payable to the Supplier under our Agreement;
<b>Force Majeure</b>	11 means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under our Agreement (provided that an inability to pay is not Force Majeure), including any matters relating to transfer of data over public communications networks and any delays or problems associated with any such networks or with the internet;
<b>Intellectual Property Rights</b>	12 means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, domain names and all similar rights and, in each case whether registered or not;
<b>Minimum Monthly Volume</b>	13 means the agreed minimum number of Transactions in any month as set out in the Order;
<b>Network Operator</b>	14 means any telecommunications network operator;
<b>Order</b>	15 means the electronic or physical form (including its schedules, annexes and appendices (if any)) ordering the Subscribed Services and containing the Special Terms entered into by or on behalf of the Customer and Supplier, incorporating these Terms and Conditions and our Agreement (and as varied by the parties by agreement in writing from time to time);
<b>Order Acceptance</b>	16 means the effective date of the relevant Order;
<b>Permitted Purpose</b>	<p>17 means use solely for the Customer's internal business operations and, in respect of each Subscribed Services, also for the internal business of operations of the Authorised Affiliates identified in respect of that Subscribed Service on the Order, in each case in accordance with our Agreement. Permitted Purpose expressly excludes any of the following to the maximum extent permitted by law:</p> <p>(a) copying, reproducing, distributing, redistributing, transmitting, modifying, adapting, editing, abstracting, selling, licensing, leasing, renting, assigning, transferring, disclosing (in each case</p>

whether or not for charge) or in any way commercially exploiting any part of any Subscribed Service;

- (b) permitting any use of any Subscribed Service in any manner by any third party (including permitting use in connection with any timesharing or service bureau, outsourced or similar service to third parties or making any Subscribed Service (or any part) available to any third party or allowing or permitting a third party to do any of the foregoing (other than to the Authorised Affiliates for the Permitted Purpose));
- (c) combining, merging or otherwise permitting any Subscribed Service (or any part of it or any Application) to become incorporated in any other program or service, or arranging or creating derivative works based on it (in whole or in part); or
- (d) attempting to reverse engineer, observe, study or test the functioning of or decompile the Services (or any part),

18except as expressly permitted under our Agreement.

## Policies

19means each of the following:

- (a) the Supplier's policy on acceptable use of the Services (as Updated from time to time), which as at Order Acceptance is the latest version available at <https://www.esendex.co.uk/acceptable-use-policy> (the **Acceptable Use Policy**);
- (b) the Supplier's policy on information security and in relation to the Services (as Updated from time to time), which as at Order Acceptance is the latest version available at <https://www.esendex.co.uk/information-security-statement> (the **Information Security Policy**);
- (c) the Supplier's privacy policy in relation to the Services (as Updated from time to time), which as at Order Acceptance is the latest version available at <https://www.esendex.co.uk/privacy-policy> (the **Privacy Policy**);

<b>Regulator</b>	20means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority;
<b>Relief Event</b>	21means: <ul style="list-style-type: none"> <li>(a) any breach of our Agreement by the Customer; or</li> <li>(b) any Force Majeure;</li> </ul>
<b>Retail Prices Index or RPI</b>	1means the All Items Retail Prices Index as published by the UK Office for National Statistics;
<b>Service Commencement Date</b>	2means the date on which the Supplier commences provision of the services as set out in an Order;
<b>Services</b>	22means the Subscribed Services and the Support Services;
<b>Special Terms</b>	23means the additional terms set out in an Order;
<b>Statement of Work</b>	24means the statement of work setting out the detailed specification of the Subscribed Service;
<b>Subscribed Service Period</b>	25means (subject to clauses 15 and 16) in respect of each Subscribed Service, the duration during which such services are to be provided as initially set out in the Order and including any Renewals, commencing on the Service Commencement Date;
<b>Subscribed Services</b>	26means each service to which the Customer has subscribed as set out in the Order (and <b>Subscribed Service</b> shall refer to each respective service separately);
<b>Subscription Fee</b>	27means, in respect of each Subscribed Service, the fees payable by the Customer in consideration of that Subscribed Service as set out in the Order;
<b>Supplier's Confidential Information</b>	28means all information (whether in oral, written or electronic form) relating to the Supplier's business which may reasonably be considered to be confidential in nature including information relating to the Supplier's technology, know-how, Intellectual Property Rights, information security controls,

processes and policies, assets, finances, strategy, products and customers. All information relating to technical or operational specifications or data relating to each Subscribed Service shall be part of the Supplier's Confidential Information;

<b>Support Hours</b>	29means 0900 to 1730 Monday to Friday (excluding bank holidays);
<b>Support Services</b>	30means, in respect of the relevant Subscribed Service, the support services provided by the Supplier to the Customer as set out in Schedule 3;
<b>Terms and Conditions</b>	31means the terms and conditions set out in the clauses and other provisions of this document (including Schedules);
<b>Transaction</b>	32means any SMS, RCS, MMS, email, voice or other format message sent or received; (ii) any voicemail received; (iii) any voice call made or received; (iv) any GSM or GPS device detection; and (v) any other form of communication accessed or engaged in, using the Service.
<b>Trial Service</b>	33means any Subscribed Service identified as being provided on a trial basis (for the duration of the period during which it is provided on such basis);
<b>Update</b>	34has the meaning given in clause 4.1, and <b>Updated</b> shall be construed accordingly; and
<b>VAT</b>	35means United Kingdom value added tax, any other tax imposed in substitution for it and any equivalent or similar tax imposed outside the United Kingdom.

2 In our Agreement, unless otherwise stated:

- .A.2.1 the table of contents, background section and the clause, paragraph, schedule or other headings in our Agreement are included for convenience only and shall have no effect on interpretation;
- .A.2.2 the Supplier and the Customer are together the **parties** and each a **party**, and a reference to a 'party' includes that party's successors and permitted assigns;
- .A.2.3 words in the singular include the plural and vice versa;
- .A.2.4 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;



- .A.2.5 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (including email); and
- .A.2.6 a reference to specific legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time and a reference to legislation includes all subordinate legislation made as at the date of our Agreement under that legislation.

## SCHEDULE 2

### PROFESSIONAL SERVICES RATE CARD

LEVEL	DAY RATE
Executive/Senior Manager	£1000
Development Consultant	£800
Solutions Delivery	£500

## SCHEDULE 3

### SUPPORT SERVICES

- 1 If the Customer requires any Support Services the Customer shall contact the Supplier's support team as follows:

Territory	Email	Telephone	Website and Chat
UK	support@esendex.co.uk helpdesk@esendex.com	0345 356 5759	<a href="http://support.esendex.co.uk/contact-support/">http://support.esendex.co.uk/contact-support/</a>
Ireland	support@esendex.ie	01 631 9410	<a href="http://support.esendex.co.uk/contact-support/">http://support.esendex.co.uk/contact-support/</a>
Spain	soporte@esendex.es	900 800 470	<a href="http://support.esendex.es/contactanos/">http://support.esendex.es/contactanos/</a>
France	support@esendex.fr	0800 940 236	<a href="http://support.esendex.fr/contactez-nous/">http://support.esendex.fr/contactez-nous/</a>
Australia	support@esendex.com.au	1300 764 946	<a href="http://support.esendex.com.au/contact-support_au/">http://support.esendex.com.au/contact-support_au/</a>
Germany	support@esendex.de	+49 (0) 351 - 8503 3399	<a href="http://support.esendex.de/kontaktformular/">http://support.esendex.de/kontaktformular/</a>

- 2 The Supplier shall respond to all queries within 4 working hours of receipt.

#### Required Information

- 3 When reporting an issue, the Customer should provide the Supplier with the following information to ensure a swift resolution:
- .A.3.1 the Customer's company name;
  - .A.3.2 the customer number or EX reference for the Customer;
  - .A.3.3 the Customer's username; and
  - .A.3.4 a full problem description and details of any error messages with examples including recipient telephone numbers.
- 4 In the majority of instances the Supplier's support team can resolve issues. However, there may be times that issues need escalation either internally or externally, and at this time the Supplier's support team remains the point of contact and will work with our other teams (internal and external) to provide a solution.
- 5 Issue resolution may necessitate a work around before a permanent solution can be implemented. A workaround may include a logical change in the Supplier's systems, where a permanent solution may include a version release, patch or physical change.

#### Third party or Supplier Escalation

- 6 If an issue is identified as a third party or Network Operator problem, this will be escalated within 1 working day of identification. Regular updates will be provided and the Supplier's support team and the Supplier will work with these parties to resolve the issue.

## SCHEDULE 4

### DATA PROTECTION ADDENDUM

#### 20 Definitions

- 1.1 In this Data Protection Addendum defined terms shall have the same meaning, and the same rules of interpretation shall apply as in the remainder of our Agreement. In addition in this Data Protection Addendum the following definitions have the meanings given below:

<b>Applicable Law</b>	1means applicable laws of the European Union (EU), the European Economic Area (EEA) or any of the EU or EEA's member states from time to time together with applicable laws in the United Kingdom from time to time;
<b>Appropriate Safeguards</b>	2means such legally enforceable mechanism(s) for Transfers of Personal Data as may be permitted under Data Protection Laws from time to time;
<b>Controller</b>	3has the meaning given to that term in Data Protection Laws;
<b>Data Protection Laws</b>	4means all Applicable Laws relating to the processing, privacy and/or use of Personal Data, as applicable to either party or the Services, including the following laws to the extent applicable in the circumstances:  (a) the GDPR;  (b) the Data Protection Act 2018;  (c) any laws which implement any such laws; and  (d) any laws which replace, extend, re-enact, consolidate or amend any of the foregoing (including where applicable, the GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of the European Union (Withdrawal) Act 2018 as modified by applicable domestic law from time to time);
<b>Data Protection Losses</b>	5means all liabilities, including all:  (a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and  (b) to the extent permitted by Applicable Law:

	<ul style="list-style-type: none"> <li>(i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;</li> <li>(ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and</li> <li>(iii) the reasonable costs of compliance with investigations by a Supervisory Authority;</li> </ul>
<b>Data Subject</b>	6has the meaning given to that term in Data Protection Laws;
<b>Data Subject Request</b>	7means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;
<b>GDPR</b>	8means the General Data Protection Regulation, Regulation (EU) 2016/679;
<b>Personal Data</b>	9has the meaning given to that term in Data Protection Laws;
<b>Personal Data Breach</b>	10means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data;
<b>processing</b>	11has the meanings given to that term in Data Protection Laws (and related terms such as process have corresponding meanings);
<b>Processing Instructions</b>	12has the meaning given to that term in paragraph 3.1.1;
<b>Processor</b>	13has the meaning given to that term in Data Protection Laws;
<b>Protected Data</b>	14means Personal Data in the Customer Data;
<b>Restricted Transfer</b>	15means a transfer of Protected Data from the Customer to the Supplier which would be prohibited by Data Protection Laws in the absence of the Customer and Supplier entering into the Standard Contractual Clauses;
<b>Standard Contractual Clauses</b>	16means the standard contractual clauses adopted by the European Commission as an appropriate safeguard to comply with the GDPR restricted transfer rules;

<b>Sub-Processor</b>	17means another Processor engaged by the Supplier for carrying out processing activities in respect of the Protected Data on behalf of the Customer;
<b>Supervisory Authority</b>	18means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws;
<b>Terms and Conditions</b>	19means the latest version of the Supplier's terms and conditions, as Updated from time to time;
<b>Transfer</b>	20bears the same meaning as the word 'transfer' in Article 44 of the GDPR (or the extent wider the definition of 'transfer' in equivalent provisions of UK Data Protection Laws). Related expressions such as Transfers and Transferring shall be construed accordingly; and
<b>UK Data Protection Laws</b>	21means Data Protection Laws that form part of the law of England and Wales, Scotland and/or Northern Ireland from time to time.

## **21 Processor and Controller**

- 1.2 The parties agree that, for the Protected Data, the Customer shall be the Controller and the Supplier shall be the Processor. Nothing in this Agreement relieves the Customer of any responsibilities or liabilities under any Data Protection Laws.
- 1.3 The Supplier shall process Protected Data in compliance with:
  - 1.3.1 the obligations under Data Protection Laws in respect of the performance of its and their obligations under our Agreement; and
  - 1.3.2 the terms of our Agreement.
- 1.4 The Customer shall ensure that it, its Affiliates and each Authorised User shall at all times comply with:
  - 1.4.1 all Data Protection Laws in connection with the processing of Protected Data, the use of the Services (and each part) and the exercise and performance of its respective rights and obligations under our Agreement, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Laws; and
  - 1.4.2 the terms of our Agreement.
- 1.5 The Customer warrants, represents and undertakes, that at all times:
  - 1.5.1 all Protected Data (if processed in accordance with our Agreement) shall comply in all respects, including in terms of its collection, storage and processing, with Data Protection Laws;

- 1.5.2 all Protected Data shall comply with clause 9.2 of the Terms and Conditions;
- 1.5.3 fair processing and other information notices have been provided to the Data Subjects of the Protected Data (and all necessary consents from such Data Subjects obtained and at all times maintained) to the extent required by Data Protection Laws in connection with all processing activities in respect of the Protected Data which may be undertaken by the Supplier and its Sub-Processors in accordance with our Agreement;
- 1.5.4 the Protected Data is accurate and up to date;
- 1.5.5 it shall maintain complete and accurate backups of all Protected Data provided to the Supplier (or anyone acting on its behalf) so as to be able to immediately recover and reconstitute such Protected Data in the event of loss, damage or corruption of such Protected Data by the Supplier or any other person; and
- 1.5.6 all instructions given by it to the Supplier in respect of Personal Data shall at all times be in accordance with Data Protection Laws.

## **22 Instructions and details of processing**

- 1.6 Insofar as the Supplier processes Protected Data on behalf of the Customer, the Supplier:
  - 1.6.1 unless required to do otherwise by Applicable Law, shall (and shall take steps to ensure each person acting under its authority shall) process the Protected Data only on and in accordance with the Customer's documented instructions as set out in this paragraph 3.1 and paragraphs 3.3 and 3.4, as Updated from time to time (**Processing Instructions**);
  - 1.6.2 if Applicable Law requires it to process Protected Data other than in accordance with the Processing Instructions, shall notify the Customer of any such requirement before processing the Protected Data (unless Applicable Law prohibits such information on important grounds of public interest); and
  - 1.6.3 shall promptly inform the Customer if the Supplier becomes aware of a Processing Instruction that, in the Supplier's opinion, infringes Data Protection Laws, and to the maximum extent permitted by mandatory law, the Supplier shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities (including any Data Protection Losses) arising from or in connection with any processing in accordance with the Customer's Processing Instructions following the Customer's receipt of that information.
- 1.7 The Customer shall be responsible for ensuring all Authorised Affiliates' and Authorised User's read and understand the Privacy Policy (as Updated from time to time).
- 1.8 The Customer acknowledges and agrees that the execution of any computer command to process (including deletion of) any Protected Data made in the use of any of the Subscribed Services by an Authorised User will be a Processing Instruction. The Customer shall ensure that Authorised Users do not execute any such command unless authorised by the Customer (and by all other relevant Controller(s)) and acknowledge that if any Protected Data is deleted pursuant to any such command the Supplier is under no obligation to seek to restore it.



- 1.9 Subject to the Order, the processing of the Protected Data by the Supplier under our Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in Annex 1.

## **23 Technical and organisational measures**

- 1.10 Taking into account the nature of the processing, the Supplier shall implement and maintain appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Protected Data and against accidental loss or destruction of, or damage to, Protected Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Protected Data to be protected, having regard to the state of technological development.

## **24 Using staff and other processors**

- 1.11 The Customer hereby gives the Supplier a general authorisation to appoint the Sub-Processors listed on the Supplier's webpage at [www.esendex.co.uk/subprocessors](http://www.esendex.co.uk/subprocessors) (**Website**). The Supplier can update the Website from time to time and will inform the Customer by email of any update, provided that the Customer registers an email address on the Website. The Customer shall have the opportunity to object to any addition or replacement by notification in writing to the Supplier, within 20 days of a change being made. In the event of an objection, the Supplier is entitled to terminate this Agreement if the Services become impossible without the addition or replacement of the relevant sub-processor.

- 1.12 The Supplier shall:

1.12.1 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under paragraphs 2 to 12 (inclusive) that is enforceable by the Supplier (including those relating to sufficient guarantees to implement appropriate technical and organisational measures);

1.12.2 ensure each such Sub-Processor complies with all such obligations; and

1.12.3 remain fully liable for all the acts and omissions of each Sub-Processor as if they were its own.

- 1.13 The Supplier shall ensure that all persons authorised by it (or by any Sub-Processor) to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential (except where disclosure is required in accordance with Applicable Law, in which case the Supplier shall, where practicable and not prohibited by Applicable Law, notify the Customer of any such requirement before such disclosure).

## **25 Assistance with compliance and Data Subject rights**

- 1.14 The Supplier shall refer all Data Subject Requests it receives to the Customer within 5 Business Days of receipt.
- 1.15 The Supplier shall provide such reasonable assistance as the Customer reasonably requires (taking into account the nature of processing and the information available to the Supplier) to the Customer in ensuring compliance with the Customer's obligations under Data Protection Laws with respect to:

- 1.15.1 security of processing;
- 1.15.2 data protection impact assessments (as such term is defined in Data Protection Laws);
- 1.15.3 prior consultation with a Supervisory Authority regarding high risk processing; and
- 1.15.4 notifications to the Supervisory Authority and/or communications to Data Subjects by the Customer in response to any Personal Data Breach,

## **26 International data transfers**

- 1.16 Where the transfer of Protected Data from the Customer to the Supplier amounts to a Restricted Transfer, the Standard Contractual Clauses shall apply to this Data Protection Addendum. In the event of any conflict or inconsistency between the terms of this Data Protection Addendum and the Standard Contractual Clauses, the Standard Contractual Clauses shall apply.
- 1.17 The Supplier shall not Transfer any Protected Data to any country outside of the UK or EEA unless:
  - 1.17.1 such Transfer is solely for the purpose set out in Annex 1;
  - 1.17.2 an adequacy decision has been made in relation to the relevant country or Appropriate Safeguards are in place;
  - 1.17.3 the Data Subject has enforceable rights and effective legal remedies; and
  - 1.17.4 such Transfer is in accordance with Data Protection Laws and our Agreement and the provisions of our Agreement shall constitute the Customer's instructions with respect to Transfers in accordance with paragraph 3.1.1.

## **27 Information and audit**

- 1.18 The Supplier shall maintain, in accordance with Data Protection Laws binding on the Supplier, written records of all categories of processing activities carried out on behalf of the Customer.
- 1.19 The Supplier shall, on request by the Customer, in accordance with Data Protection Laws, make available to the Customer such information as is reasonably necessary to demonstrate the Supplier's compliance with its obligations under this Data Protection Addendum and Article 28 of the GDPR (and under any Data Protection Laws equivalent to that Article 28), and allow for audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose provided:
  - 1.19.1 such audit, inspection or information request is reasonable, limited to information in the Supplier's (or any Sub-Processor's) possession or control and is subject to the Customer giving the Supplier reasonable prior notice of such audit, inspection or information request;
  - 1.19.2 the Customer pays the Supplier's reasonable costs in allowing any audit or inspection (unless such audit or inspection is required by a Supervisory Authority or due to a breach by the Supplier of this Data Protection Addendum);

- 1.19.3 the parties (each acting reasonably and consent not to be unreasonably withheld or delayed) shall agree the timing, scope and duration of the audit, inspection or information release together with any specific policies or other steps with which the Customer or third party auditor shall comply (including to protect the security and confidentiality of other customers, to ensure the Supplier is not placed in breach of any other arrangement with any other customer and so as to comply with the remainder of this paragraph 8.2);
- 1.19.4 the Customer's rights under this paragraph 8.2 may only be exercised once in any consecutive 12 month period, unless otherwise required by a Supervisory Authority or if the Customer (acting reasonably) believes the Supplier is in breach of this Data Protection Addendum;
- 1.19.5 the Customer shall promptly report any non-compliance identified by the audit, inspection or release of information to the Supplier;
- 1.19.6 the Customer shall ensure that all information obtained or generated by the Customer or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure required by Applicable Law);
- 1.19.7 the Customer shall ensure that any such audit or inspection is undertaken during normal business hours, with minimal disruption to the businesses of the Supplier and each Sub-Processor; and
- 1.19.8 the Customer shall ensure that each person acting on its behalf in connection with such audit or inspection (including the personnel of any third party auditor) shall not by any act or omission cause or contribute to any damage, destruction, loss or corruption of or to any systems, equipment or data in the control or possession of the Supplier or any Sub-Processor whilst conducting any such audit or inspection.

## **28 Breach notification**

- 1.20 In respect of any Personal Data Breach involving Protected Data, the Supplier shall, within 48 hours of becoming aware:
  - 1.20.1 notify the Customer of the Personal Data Breach; and
  - 1.20.2 provide the Customer with details of the Personal Data Breach.

## **29 Deletion of Protected Data and copies**

Following the end of the provision of the Services (or part) relating to the processing of Protected Data the Supplier shall dispose of Protected Data in accordance with its obligations under this Agreement. the Supplier shall have no liability (howsoever arising, including in negligence) for any deletion or destruction of any such Protected Data undertaken in accordance with our Agreement.

## **30 Compensation and claims**

- 1.21 Subject to clause 13 of the Terms and Conditions, the Supplier shall be liable for Data Protection Losses (howsoever arising, whether in contract, tort (including negligence) or otherwise) under or in connection with our Agreement:

- 1.21.1 only to the extent caused by the processing of Protected Data under our Agreement and directly resulting from the Supplier's breach of our Agreement; and
- 1.21.2 in no circumstances to the extent that any Data Protection Losses (or the circumstances giving rise to them) are contributed to or caused by any breach of our Agreement by the Customer (including in accordance with paragraph ).
- 1.22 If a party receives a compensation claim from a person relating to processing of Protected Data in connection with our Agreement or the Services, it shall promptly provide the other party with notice and full details of such claim. The party with conduct of the action shall:
  - 1.22.1 make no admission of liability nor agree to any settlement or compromise of the relevant claim without the prior written consent of the other party (which shall not be unreasonably withheld or delayed); and
  - 1.22.2 consult fully with the other party in relation to any such action but the terms of any settlement or compromise of the claim will be exclusively the decision of the party that is responsible under our Agreement for paying the compensation.
- 1.23 This paragraph 11 is intended to apply to the allocation of liability for Data Protection Losses as between the parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Laws to the contrary, except:
  - 1.23.1 to the extent not permitted by Applicable Law (including Data Protection Laws); and
  - 1.23.2 that it does not affect the liability of either party to any Data Subject.

## **31 Survival**

This Data Protection Addendum shall survive termination (for any reason) or expiry of our Agreement and continue until no Protected Data remains in the possession or control of the Supplier or any Sub-Processor, except that paragraphs 10 to 12 (inclusive) shall continue indefinitely

## **Annex 1**

Data processing details

### **Subject-matter of processing:**

Sending business communications

### **Duration of the processing:**

Until the earlier of final termination or final expiry of our Agreement, except as otherwise expressly stated in our Agreement

### **Nature and purpose of the processing:**

Processing in accordance with the rights and obligations of the parties under our Agreement;

Processing as reasonably required to provide the Services;

Processing as initiated, requested or instructed by Authorised Users in connection with their use of the Services, or by the Customer, in each case in a manner consistent with our Agreement; and/or

In relation to each Subscribed Service, otherwise in accordance with the nature and purpose identified in its Order;

### **Type of Personal Data:**

Name;

Address;

Mobile Number; and

as further described in an Order.

### **Categories of Data Subjects:**

Customers and/or employees of the Customer

