



Crown Commercial Service

G-Cloud 11 Call-Off Contract (version 4)

Contents

| | |
|--|----|
| G-Cloud 11 Call-Off Contract (version 4)..... | 1 |
| Part A - Order Form | 5 |
| Principle contact details | 6 |
| Call-Off Contract term | 6 |
| Buyer contractual details..... | 7 |
| Supplier's information..... | 8 |
| Call-Off Contract charges and payment..... | 8 |
| Additional Buyer terms | 9 |
| 1. Call-Off Contract start date and length..... | 32 |
| 2. Incorporation of terms | 32 |
| 3. Supply of services | 33 |
| 4. Supplier staff | 33 |
| 5. Due diligence | 34 |
| 6. Business continuity and disaster recovery | 34 |
| 7. Payment, VAT and Call-Off Contract charges..... | 35 |
| 8. Recovery of sums due and right of set-off..... | 36 |
| 9. Insurance | 36 |
| 10. Confidentiality..... | 37 |
| 11. Intellectual Property Rights | 37 |
| 12. Protection of information | 38 |

| | |
|--|----|
| 13. Buyer data | 39 |
| 14. Standards and quality | 40 |
| 15. Open source | 40 |
| 16. Security | 41 |
| 17. Guarantee | 41 |
| 18. Ending the Call-Off Contract | 42 |
| 19. Consequences of suspension, ending and expiry | 43 |
| 20. Notices | 44 |
| 21. Exit plan | 44 |
| 22. Handover to replacement supplier | 45 |
| 23. Force majeure | 46 |
| 24. Liability | 46 |
| 25. Premises | 46 |
| 26. Equipment | 47 |
| 27. The Contracts (Rights of Third Parties) Act 1999 | 47 |
| 28. Environmental requirements | 47 |
| 29. The Employment Regulations (TUPE) | 47 |
| 30. Additional G-Cloud services | 49 |
| 31. Collaboration | 49 |
| 32. Variation process | 49 |
| 33. Data Protection Legislation (GDPR) | 50 |
| Schedule 3 - Collaboration agreement – Not used | 51 |
| 1. Definitions and interpretation | 51 |
| 2. Term of the agreement | 53 |
| 3. Provision of the collaboration plan | 53 |
| 4. Collaboration activities | 53 |
| 5. Invoicing | 54 |
| 6. Confidentiality | 54 |
| 7. Warranties | 55 |
| 8. Limitation of liability | 55 |
| 9. Dispute resolution process | 56 |
| 10. Termination and consequences of termination | 57 |

| | | |
|------|---|----|
| 10.1 | Termination..... | 57 |
| 10.2 | Consequences of termination | 57 |
| 11. | General provisions | 58 |
| 11.1 | Force majeure | 58 |
| 11.2 | Assignment and subcontracting..... | 58 |
| 11.3 | Notices..... | 58 |
| 11.4 | Entire agreement | 59 |
| 11.5 | Rights of third parties..... | 59 |
| 11.6 | Severability | 59 |
| 11.7 | Variations..... | 59 |
| 11.8 | No waiver..... | 59 |
| 11.9 | Governing law and jurisdiction | 60 |
| | Collaboration Agreement Schedule 1 - List of contracts..... | 61 |
| | [Collaboration Agreement Schedule 2 - Outline collaboration plan] | 62 |
| | Schedule 4 - Alternative clauses – Not used | 62 |
| 1. | Introduction | 62 |
| 2. | Clauses selected..... | 62 |
| 2.3 | Discrimination | 62 |
| 2.4 | Equality policies and practices..... | 63 |
| 2.5 | Equality..... | 65 |
| 2.6 | Health and safety..... | 65 |
| 2.7 | Criminal damage | 66 |
| | Schedule 5 – Guarantee – Not Used | 67 |
| | Definitions and interpretation | 68 |
| | Guarantee and indemnity..... | 69 |
| | Obligation to enter into a new contract..... | 69 |
| | Demands and notices | 70 |
| | Beneficiary’s protections | 70 |
| | Representations and warranties | 72 |
| | Payments and set-off..... | 72 |
| | Guarantor’s acknowledgement | 73 |
| | Assignment | 73 |

| | |
|--|----|
| Severance | 73 |
| Third-party rights | 73 |
| Governing law | 73 |
| Schedule 6 - Glossary and interpretations..... | 74 |
| Schedule 7 - GDPR Information | 85 |
| Annex 1 - Processing Personal Data..... | 85 |

Part A - Order Form

| | |
|---|--|
| Digital Marketplace service ID number: | 439217261551332 |
| Call-Off Contract reference: | Con_17956 |
| Call-Off Contract title: | Delivering Better Outcomes through Data and Cognitive HR |
| Call-Off Contract description: | To provide support and guidance in the development of the MoJ's agnostic solution approach to the provision of maturely visualised workforce insights, replacing its existing approaches for Delivering Better Outcomes through Data and Cognitive HR. |
| Start date: | 23 rd June 2020 |
| Expiry date: | 31 st December 2020 |
| Call-Off Contract value: | REDACTED |
| Charging method: | Milestone Payments |
| Contract Purchase Agreement (PO to be issued separately) | 23070024931 |

This Order Form is issued under the G-Cloud 11 Framework Agreement (RM1557.11).

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 and defined in the Application.

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

| | |
|--------------------------------|----------|
| From: the Buyer | REDACTED |
| To: the Supplier | REDACTED |
| Together: the 'Parties' | |

Principle contact details

| | |
|--------------------------|----------|
| For the Buyer: | REDACTED |
| For the Supplier: | REDACTED |

Call-Off Contract term

| | |
|--------------------|--|
| Start date: | This Call-Off Contract Starts on 23 rd June 2020 and is valid for 6 months. |
|--------------------|--|

| | |
|------------------------------|--|
| Ending (termination): | Supplier is entitled to End the Call Off Contract if the Buyer fails to pay any undisputed sums, payable in accordance with the terms of Call Off Contract, within 5 (five) Working Days of receipt of such notice from the Supplier. In the event of Ending without cause, the Buyer will issue 5 (five) Working Days written notice to the Supplier. |
| Extension period: | This Call-Off Contract can be extended by the Buyer for any period(s) within 24 months of the Start date, by giving the Supplier 2 weeks written notice before its expiry. Extensions which extend the Term beyond 24 months are only permitted if the Supplier complies with the additional exit plan requirements at clauses 21.3 to 21.8. |

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 contract may vary during this Call-Off Contract.

| | |
|-----------------------------------|--|
| G-Cloud lot: | This Call-Off Contract is for the provision of Services under: Lot 3 - Cloud support |
| G-Cloud services required: | The Services to be provided by the Supplier under the above Lot are listed in Framework Section 2 and outlined in the document attached in Schedule 1. |
| Additional Services: | N/A |
| Location: | The Services will be delivered to Ministry of Justice - 102 Petty France, London, SW1H 9AJ |
| Quality standards: | The quality standards required for this Call-Off Contract are detailed in the Supplier's proposal attached in Schedule 1. |
| Technical standards: | The technical standards required for this Call-Off Contract are in the Supplier's proposal attached in Schedule 1 - Services. |
| Service level agreement: | N/A |
| Onboarding: | The onboarding plan for this Call-Off Contract is are in the Supplier's proposal attached in Schedule 1 – Section 3.2 |
| Offboarding: | N/A |

| | |
|-------------------------------------|--|
| Collaboration agreement: | N/A |
| Limit on Parties' liability: | <p>The annual total liability of either Party for all Property defaults will not exceed £1million.</p> <p>The annual total liability for Buyer Data defaults will not exceed 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term (whichever is the greater).</p> <p>The annual total liability for all other defaults will not exceed the greater 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term (whichever is the greater).</p> |
| Insurance: | <p>The insurance(s) required will be:</p> <ul style="list-style-type: none"> • a minimum insurance period of 6 years following the expiration or Ending of this Call-Off Contract • professional indemnity insurance cover to be held by the Supplier and by any agent, Subcontractor or consultant involved in the supply of the G-Cloud Services. This professional indemnity insurance cover will have a minimum limit of indemnity of • £1,000,000 for each individual claim or any higher limit the Buyer requires (and as required by Law) • employers' liability insurance with a minimum limit of £5,000,000 or any higher minimum limit required by Law |
| Force majeure: | A Party may end this Call-Off Contract if the Other Party is affected by a Force Majeure Event that lasts for more than 7 consecutive days. |
| Audit: | 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. 7.3,7.5,7.6,7.8,7.9, and 7.12. |
| Buyer's responsibilities: | The Buyer is responsible to provide reasonable and appropriate assistance to the Supplier as necessary for them to deliver their obligations under this contract. |
| Buyer's equipment: | N/A. |

Supplier's information

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.

| | |
|--|--|
| Subcontractors or partners: | The following is a list of the Supplier's Subcontractors or Partners N/A |
| Payment method: | The payment method for this Call-Off Contract is BACS. |
| Payment profile: | The payment profile for this Call-Off Contract is based on the completion of agreed milestones and paid in arrears. |
| Invoice details: | The Supplier will issue electronic invoices following the completion of a signed off milestone and will be submitted in arrears. The Buyer will pay the Supplier within 30 days of receipt of a valid invoice. |
| Who and where to send invoices to: | Invoices will be sent to: REDACTED |
| Invoice information required – for example purchase order, project reference: | All invoices must include Call-Off Contract and PO references. |
| Invoice frequency: | Invoice(s) will be sent to the Buyer in arrears and following the completion of the agreed milestones. |
| Call-Off Contract value: | The total value of this Call-Off Contract is REDACTED |
| Call-Off Contract charges: | The breakdown of the Charges is detailed in Schedule 1 |

Additional Buyer terms

| | |
|---|---|
| Performance of the service and deliverables: | This Call-Off Contract will include the following implementation plan, exit and offboarding plans and milestones: Contract payments will be made against the following payment milestones; <ul style="list-style-type: none"> • REDACTED |
| Guarantee: | N/A |

| | |
|---|----------|
| Warranties, representations: | N/A |
| Supplemental requirements in addition to the Call-Off terms: | N/A |
| Alternative clauses: | N/A |
| Buyer specific amendments to/refinements of the Call-Off Contract terms: | N/A |
| Public Services Network (PSN): | N/A |
| Personal Data and Data Subjects: | REDACTED |

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

The services will also be subject to the G-Cloud 11 – KPMG Supplier Terms <https://assets.digitalmarketplace.service.gov.uk/g-cloud-11/documents/93303/439217261551332-terms-and-conditions-2019-05-10-1426.pdf>

(A) The Buyer provided an Order Form for Services to the Supplier.

| | | |
|-------------------|----------|----------|
| Signed: | Supplier | Buyer |
| Name: | REDACTED | REDACTED |
| Title: | REDACTED | REDACTED |
| Signature: | REDACTED | REDACTED |
| Date: | | |

Schedule 1 – Services

REDACTED

Contract Value and Day Rates:

The buyer and the supplier have agreed that the total value of the contract for this project will be capped at REDACTED, with the initial 12-week scope fixed at REDACTED.

As per Clause 30, should the Buyer require additional support to allow acceleration of key enablers to the wider data and people strategies and build greater momentum for implementation, a resourcing profile will be developed and costed on G-Cloud rates on a time and materials basis.

Any additions or variations will be capped at REDACTED.

It has been agreed that invoicing will be derived on a time and materials basis, using the current SFIA rates that are hosted in the G-cloud catalogue.

REDACTED

Performance Monitoring and Payment Milestones

The buyer and the supplier have agreed that:

- Key support work package outcomes will be agreed between both parties prior to the start of each in scope support assignment over the duration of the contract. This will be used as a measure to track ongoing progress and the buyer's satisfaction of support outcomes achieved.
- A weekly checkpoint meeting will be set up between the programme Director and the supplier's delivery management representatives to review progress against agreed scope. The supplier will produce a weekly report to inform this meeting that will include a weekly time and materials total committed spend summary.
- Contract payments will be made against the following payment milestones;

REDACTED

G-Cloud 11 Framework Agreement

Scope and definitions

KPMG LLP has been appointed to the Crown Commercial Service G-Cloud 11 Framework Agreement reference RM1557.11 (the “Framework”) which sets out the terms applicable to Call-Off Contracts entered into between a Supplier and a Buyer under that Framework (the “Call-Off Terms”).

Unless otherwise provided in these Supplier Terms:

- (i) capitalised words have the meaning given to them in the Framework and Call-Off Terms;
- (ii) the term “you” and its derivatives refer to the Buyer and the terms “we” and “our” and its derivatives refer to the Supplier, each as identified in the Order Form;
- (iii) references to clause numbers are to clauses in the Call-Off Terms and references to paragraphs are references to paragraphs in these Supplier Terms;
- (iv) references to the Order Form are references to the relevant Order Form entered into between the Buyer and Supplier; and
- (v) the term “the Services” means the Services (including any Additional Services) set out in the applicable Order Form and any other obligations performed by us under the Call-Off Contract.

These Supplier Terms explain how, together with the Call-Off Terms, we will work with you under a Call-Off Contract and set out the supplemental terms that will apply in relation to the Services provided in addition to the Call-Off Terms.

At your request we may agree with you to specifically vary these Supplier Terms for a specific Call-Off Contract, provided such amendment does not materially change the overall effect of these Supplier Terms, and we will set out any agreed amendment in the Order Form.

Providing the Services

Notwithstanding our duties and obligations, our role is to provide the Services rather than to make business decisions on your behalf, and you will always remain responsible and accountable for managing your affairs, deciding on what to do after receiving our Services, and implementing any advice or recommendations we provide.

In relation to any due diligence we may have conducted in accordance with clause 5, you warrant that any information you provided us, and any responses to our enquiries, was accurate and complete in all material respects. If you become aware of any inaccuracies or omissions you will promptly notify us in writing.

The Services will comprise the implementation of the Platform (as defined in paragraph 12.1 below) and certain associated advisory services (for instance, design verification, project management and business change) as referred to in the Order Form. If the Platform is to be implemented in a number of releases, the defined activities related to each to be implemented (and any other Services) will be called-off from time to time by you as set out in (or in accordance with the process set out in or referenced in) the Order Form.

The description of any key Deliverables will be set out in or referenced in the Order Form (including any key documentary deliverables and/or implementation deliverables). We shall ensure that each Deliverable shall comply in all material respects with the features and functionality set out in or referenced in the Order Form. We shall use all reasonable endeavours to perform the Services in accordance with the agreed timescales (unless otherwise agreed with the Buyer in writing or we are relieved from such timescales under the terms of the Call-Off Contract).

We will without charge and for a period of 30 days commencing from the corresponding go-live date (being the date when the relevant implementation Deliverables under this Call-Off Contract are first available for use in a production environment by your end users (other than for the purpose of testing)) diagnose and correct Defects (each a "Warranty Period"). This is your only remedy for Defects and you agree that on-going support and maintenance services in respect of the Services and any Deliverable will not be provided after the end of the relevant Warranty Period unless agreed and documented in the Order Form (or agreed pursuant to a separate Call-Off Contract). "Defects" means an error in a Deliverable which causes it to fail to comply substantially with an agreed specification or requirement detailed in the Order Form.

The way we work

In providing the Services we may provide advice orally, in draft or interim form, but our later written advice or final written report supersedes anything provided earlier and you should not rely on any advice that is draft or interim. If we give you oral advice, and you want to rely on it, let us know and we will provide it in writing. Only the written advice provided in response to such a request should be relied upon.

We cannot predict future events or circumstances, and you should not interpret any advice, opinion, statement of expectation, forecast or recommendation given by us as being a prediction or guarantee of any outcome.

Unless specifically forming part of the Services, or otherwise specifically agreed with you in writing:

- (i) if we receive information from you or from other sources in connection with the Services, we may rely upon it without independent verification; and
- (ii) we will not update the Services or any Deliverables after we have delivered the final Deliverables.

The Services and any Deliverables are provided for your internal use only (and not for the benefit of any third party) and, except as specifically provided under the Call-Off Terms, they may not be disclosed to any other party without our prior written consent (except as required by Law or by a competent Regulatory Body in which case you shall, if permitted by Law or the Regulatory Body, promptly inform us). However, you may disclose the Deliverables to other government bodies or agencies for support purposes and to your insurers, legal and other professional advisers if seeking advice in relation to the Services, provided that you inform them that: (i) the Deliverables are to be held in confidence; and (ii) to the fullest extent permitted by law, we accept no liability to them in connection with the Services or the Deliverables. If you disclose any part of the Services or any Deliverable to any third party, you shall be responsible for, and shall indemnify us and all KPMG Persons from, any claim by such third party (including against any Loss, damage, expense or liability) in relation to its use or reliance on the Services or Deliverables.

We may agree with you a detailed procedure for managing any changes that you or we may request in relation to the Services or the Call-Off Contract. In the absence of agreeing such procedure, the following process shall apply:

- (i) if either Party requests a change to the scope or performance of the Services or any other aspect of the Call-Off Contract we will discuss this with you and shall, within a reasonable time, provide a written explanation of (a) the likely time required to implement the change; (b) any variation to the Charges arising from the change, or any cost to implement the change; and (c) any impact of the change on the terms of the Call-Off Contract; and
- (ii) if you approve the details of the change we shall promptly document the details of the change in a change form. If you approve the change form we shall both sign it, and once signed by both Parties it shall form part of (and amend as appropriate) the Call-Off Contract. No change shall be effective or binding until a change form is signed by both Parties.

We will agree with you a detailed procedure for managing and governing the Services and the performance of both of our obligations under the Call-Off Contract. Both Parties shall follow this governance procedure in relation to activities under the Call-Off Contract.

If, as part of or to facilitate the Services, you require use of a collaboration site, such as for uploading data or other collaboration tools or data repository site, additional terms may apply. We will provide these to you at the relevant time and these terms will apply in addition to these Supplier Terms in relation to your use of the relevant collaboration site or tools.

Subcontracting

In addition to any Subcontractors expressly identified in the Order Form, we may also use any of the third party subcontractors specifically set out in our Service Description or our Application. We may also rely on the services of other KPMG Persons (defined below) in providing the Services, to which you hereby consent. However, we will remain primarily responsible to you for the performance of the Services in accordance with incorporated Framework clause 8.34.

In these Supplier Terms “KPMG Persons” means KPMG LLP and each and all of its members, employees, and other workers, together with any entity associated with us and each and all of its partners, members, directors, employees and other workers, and “KPMG Person” means any one of them.

Managing delays

If a Party becomes aware that its obligations are not going to be met within any agreed timescale (including any milestones or go-live dates), it shall advise the other Party of this as soon as reasonably possible in writing.

Each Party shall advise the other Party as soon as reasonably possible if it becomes aware that any anticipated failure by the other Party to perform its obligations under this Call-Off Contract will prevent it from performing obligations, fulfilling dependencies (including any Buyer responsibilities) or meeting any assumptions, milestones or go-live dates.

Except in the circumstances referred to in paragraph 8, if we become aware that we will not meet a milestone or go-live date by the relevant date, we shall promptly provide you with details of our proposed mitigating actions and shall use reasonable endeavours to reduce or mitigate the impact of the delay.

Nothing in the Call-Off Contract shall make time of the essence in respect of our performance of the Services or provisions of any Deliverable.

Buyer's responsibilities

You shall provide (and procure that your personnel and any of your other suppliers provide), in a timely manner, such cooperation, information, documents and access to adequately skilled and knowledgeable personnel (including project stakeholders), premises, systems and facilities, as set out in the Order Form or as we reasonably need to provide the Services or we request in order to obtain all necessary licences and permissions. We shall endeavour to set out such requirements in the Order Form, but you acknowledge that such details may not be exhaustive.

In order to enable us to provide the Services, you shall:

- (i) perform or comply with (as the context permits) any dependencies or responsibilities set out in or referenced in the Order Form;
- (ii) give prompt attention to any matter raised by us relating to your obligations and the performance of the Services;
- (iii) inform us of any changed circumstances or information that may have an impact on our Services (and where any developments increase our obligations or vary the scope of the Services, the Parties shall agree the same as a change in scope under the agreed change control procedure);
- (iv) ensure that the personnel with whom we deal have the required skills and information to support the receipt of the Services;
- (v) be responsible for acquiring all such products and the appropriate license rights necessary for us and our Subcontractors to access your systems (including any third party software) in connection with the Services; and
- (vi) enter into any notifications, registrations and disclosures required of you by Law.

If the Services are not to be performed at our premises, you agree to:

- (i) provide (and ensure that all arrangements are made for) access to your premises and suitable workstations and access to your systems and software to enable us to provide the Services (including arrangements for security procedures, virus checks and any licences or consents as may be required); and
- (ii) ensure that the Supplier Staff are able to safely use your premises to provide the Services and that your premises are free from recognised hazards and, at no charge to us, to provide reasonable levels of support at your premises consistent with provision of the Services at those locations (including any specific support requirements set out in or referenced in the Order Form).

We may rely on any instructions, requests or information supplied, orally or in writing, by any person whom we reasonably believe to be authorised by you to communicate with us for the purposes of the Call-Off Contract. We may at your request send documents to an electronic storage facility hosted or controlled by you or at your direction, in which event you shall be responsible for security and confidentiality at such facility.

You must review and sign off the Deliverables in accordance with the procedure(s) set out in or referenced in the Order Form, or as otherwise agreed and documented between us in writing, as required to enable us to meet any timescales (including any design, specification, testing, migration and live promotion), as meeting your requirements, being suitable for the purposes of your business and meeting any Laws that apply to you or your business.

You shall carry out the acceptance tests (if any) in relation to the Services and Deliverables in accordance with the procedure(s) set out in or referenced in the Order Form, or as otherwise agreed and documented between us in writing. You must carry out such testing in accordance with any agreed timetable set out in or referenced in the Order Form or, in the absence of such timetable, within such timetable as we reasonably require to enable us to deliver the Services and Deliverables. You must promptly carry out the acceptance tests, not unreasonably delay any testing and not unreasonably withhold your acceptance of the Services and Deliverables.

You warrant that:

- (i) you shall inform us (and have informed us of any such matters that are in effect at the date of the Call-Off Contract) in writing of all information relevant to your regulatory practices (including but not limited to policies, interactions with any Regulatory Body and enforcement actions) and related context within which we provide the Services and the Deliverables, and any regulatory or other relevant steps which are specific to you and your operations which we, in providing the Services, needs to take into account in providing the relevant Services; and
- (ii) you shall comply with the export laws and regulations of the United Kingdom and as applicable the United States and any other relevant local export laws and regulations (including “deemed export” and “deemed re-export” regulations) ("Export Controls") which apply to the Platform and the Deliverables. You agree that such Export Controls govern the use of the Platform (including technical data) and any Deliverables provided under the Call-Off Contract, and agree to comply with all such Export Controls. You agree that no such Deliverable will be used or exported, directly or indirectly in violation of or in a way prohibited by these laws.

Buyer systems and third parties

You shall enter into and maintain for the duration of the Services the Platform Licence(s) and any Third Party Licence(s) (as defined in paragraph 12.1 below) and grant us the rights set out under paragraph 12 to enable us to perform the Services.

You shall ensure for the duration of the Services that:

- (i) the Platform Owner (as defined in paragraph 12.1 below) is and remains responsible to you for technical support and maintaining and supporting the functionality of the Platform and any future developments of the Platform;
- (ii) each Third Party Licensor (as defined in paragraph 12.1 below) is and remains responsible to you for technical support and maintaining and supporting the functionality of its IPRs and any future developments of its IPRs; and
- (iii) you promptly escalate:
 - (a) any defects or operational instability in the Platform or any Third Party Licensor product that affect the performance of the Services or the operation of the Deliverables; and

(b) any failure by the Platform or any Third Party Licensor product (licensed directly to you) to meet the agreed specification (except, for the avoidance of doubt, where it is our responsibility to configure the Platform or Third Party Licensor product to meet the specification as part of the Services), as soon as possible after becoming aware of the relevant issue (including both those issues discovered by you and those reported to you by us) and to procure that the Platform Owner in the case of the Platform Licence(s) and the Third Party Licensor in the case of the Third Party Licence(s) investigates and remedies the issue in question as soon as reasonably possible (and in any event in good time to enable us to comply with our obligations under the Call-Off Contract) or to take such actions yourself in respect of your own systems.

We acknowledge that you may engage other suppliers and contractors to perform your obligations under the Call-Off Contract on your behalf, but you must inform us before doing so. You shall not be relieved from any of your obligations under the Call-Off Contract by delegating the performance of any part of your obligations to any supplier or contractor. You shall be responsible for the acts and omissions of all such suppliers and contractors as if they were your acts and omissions.

Subject to paragraph 3.4, you may disclose our Confidential Information (with the exception of any Restricted Information (as defined in paragraph 10.5)) to your other suppliers and contractors solely to the extent necessary, and for so long as is necessary, to enable them to perform your obligations under the Call-Off Contract or to enable you to obtain the benefits conferred under Call-Off Contract and provided that such third party has signed a confidentiality agreement on terms at least as protective of our Confidential Information as in the Call-Off Contract and enforceable by us, and they may only use our Confidential Information for the purposes of the services it provides to you and they may not disclose our Confidential Information to any other third party.

Relief Events

If there is a Relief Event (as defined in paragraph 8.3 below) this may have an impact on our delivery of the Service (such as on timescales, our ability to comply with the terms of the Call-Off Contract, or to increase our costs) and we shall be relieved from our obligations or any delivery timetable/date to the extent impacted by the Relief Event. We may also recover from you any additional costs we incur as a direct result of the Relief Event, provided we use reasonable endeavours to mitigate the impact of the Relief Event to the extent we are reasonably able to.

If we become aware of a Relief Event, and that Relief Event has or is likely to have a material detrimental effect on our ability to comply with our obligations:

- (i) we shall provide you with notice of that Relief Event, its consequences, and whether we believes there is likely to be a cost implication or delay due to such failure as soon as reasonably practicable;
- (ii) we shall use reasonable endeavours to mitigate the impact of a Relief Event, which may include implementing workaround in the way or method of providing the Services or a Deliverable; and
- (iii) we shall both review the relevant details of the likely impact of the Relief Event through the governance procedures.

A "Relief Event" means (a) any failure by you to ensure that your dependencies and responsibilities are performed; (b) any failure by you to comply with your obligations under the Call-Off Contract; (b)

any assumptions set out in or referenced in the Order Form proving to be incorrect; and (d) any failure of the Platform or you Third Party Licensor's IPRs to conform to its relevant specification.

Buyer policies

We appreciate that you may have your own internal policies and procedures applicable to the Services ("Buyer Policies") with which you would like us to follow in providing the Services (which may include staff vetting, security and environmental requirements). However, in order to enable us to ensure we can comply with any Buyer Policies in providing the Services (and for the Charges), we require written copies of them in advance of entering into the Call-Off Contract (other than the specific policies listed in the Call-Off Terms).

If you ask us to comply with any additional or amended Buyer Policies after the date of the Call-Off Contract we will use our reasonable endeavours to comply with them in all material respects, however we will discuss with you if we are unable to comply with any additional or amended Buyer Policies in providing the Services or if we are unable to do so for the Charges.

Confidentiality

We are a regulated business and comply with the confidentiality standards of the Institute of Chartered

Accountants in England and Wales and will comply with the specific confidentiality obligations set out in the Call-Off Terms. Notwithstanding this, we may share information relating to you, our relationship with you, and the Services (including Confidential Information) with other KPMG Persons, and that information may be accessed by other parties who facilitate or support our business, but we will ensure that such parties are bound by confidentiality obligations protecting your Confidential Information and we are still responsible for ensuring such confidentiality if Confidential Information is shared with or accessed by such parties.

We may also disclose your Confidential Information to any of your other suppliers and contractors where you have instructed us to work with those third parties or to transfer your Confidential Information to them. You are responsible for ensuring you have appropriate confidentiality obligations in place with your other suppliers and contractors in respect to such disclosures.

To reciprocate the obligation in incorporated Framework clause 8.83, you must take all necessary precautions to ensure that any of our Confidential Information is only disclosed to such of your personnel to the extent that it is strictly necessary for them to know the Confidential Information and you must ensure that they comply with the confidentiality obligations under the Call-Off Contract.

If a Party shares the other Party's Confidential Information it shall be responsible for the acts and omissions of all individuals or entities to which it disclosed the Confidential Information as if they were the acts and omissions of that Party to the extent that Party would be liable to the other Party under or in connection with the Call-Off Contract for those acts and omissions.

Due to the nature of our business we require you to comply with additional restrictions in relation to "Restricted Information", being our Confidential Information which refers to (a) our internal financial data, including any internal profit margins; (b) our other clients; (c) our internal business processes and operations not related to the Services; (d) personnel information concerning Supplier Staff; or (e) information in respect of which we are bound by separate duties owed to third parties not to reveal certain information (whether founded in law, regulation or contract). These restrictions include not to disclose our Restricted Information to any third party unless such disclosure is required by

Law (and only then to the minimum extent required), or any other reasonable restriction we notify you of in writing. We may also withhold any Restricted Information from any audit.

To reciprocate the obligation in incorporated Framework clause 8.85, you will immediately tell us about any security breach of our Confidential Information and will keep a record of those breaches. You will take the necessary steps to recover this information. You will co-operate with us in any investigation into the breach that we consider is necessary.

If you request (or the Call-Off Terms require) that we destroy or procure the return of your Confidential Information or any data we will take commercially reasonable steps to delete the same from our computer and communications systems and devices. However, we may retain a copy of such Confidential Information or data as required by Law or our record retention policy (which we have implemented to enable us to comply with Law and the requirements of our Regulatory Body).

To reciprocate the obligation in clause 16.2, you will use software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software and to prevent it spreading or otherwise having an adverse effect on our systems or those of our Subcontractors. You are also responsible for ensuring that the Platform Owner and each Third Party Licensor use software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software and to prevent it spreading or otherwise having an adverse effect on our systems or those of our Subcontractors.

To clarify, we accept our obligation under clause 16.3 only in relation to Malicious Software introduced by us or our Subcontractors (or our Subcontractors' systems). To reciprocate clause 16.3, if Malicious Software is introduced by you or your third parties (or your to their systems) into our systems you will help us to mitigate any losses and will, as requested, help us to restore our systems as soon as possible.

To reciprocate the obligation in clause 16.5, you will immediately notify us of any breach of security of our Confidential Information and you will, where the breach occurred because of your default, recover our Confidential Information however it may be recorded.

Both Parties agree that the other may make any notifications, registrations and disclosures required by Law or considered advisable to comply with Law and this may include disclosures or registrations relating to money laundering, tax requirements, and criminal or regulatory investigations.

We may use information we obtain in performing the Services on an anonymised and/or aggregated basis so that no Personal Data or Confidential Information is disclosed, for benchmarking, analytics, quality assurance or other purposes related to our business.

Conflicts of Interest

We may be delivering services to, or be approached to deliver services to, another party or parties with interests which conflict with yours (a "Conflicting Party"). We therefore have policies and procedures in place (as required by our Regulatory Body) to identify and manage potential conflicts between the interests of our clients. Where there is a risk of a conflict we may establish "Barriers" as safeguards designed to facilitate the protection of each client's interests, which may include (for example) separate teams, their geographical and operational separation and/or access controls over data, computer servers and electronic mail systems.

You accept that Supplier Staff are free to deliver services to Conflicting Parties, but where the interests of any Conflicting Party directly conflict with yours in relation to the subject matter of the Services (or under Framework clause 8.44) then the Supplier Staff shall not deliver services to the Conflicting Party and only other KPMG Persons may deliver services to the Conflicting Party where appropriate Barriers are in place. Where this process is followed and such Barriers are in place you agree that this will be sufficient in accordance with incorporated Framework clauses 8.46 to 8.48 to manage such conflict of interest.

We will seek to identify Conflicting Parties in the circumstances set out in paragraph 11.1, however if you know or become aware that a potential conflict may arise then you must inform us promptly.

Where a third party has engaged us to deliver services before we entered into the Call-Off Contract and subsequently circumstances change, we may consider that, even with Barriers operating, your interests are likely to be prejudiced and we may not be satisfied that the situation can be managed. In that event, we may have to terminate the Call-Off Contract and we shall be entitled to do so on notice taking effect immediately on delivery, but we shall consult with you before we take this step.

The Supplier Staff who are engaged in the provision of the Services to you shall not be:

- (i) expected or assumed to have knowledge of any information known to other KPMG Persons not engaged on the Services; and
- (ii) required to make use of or to disclose to you any information, whether known to them personally or known to other KPMG Persons, which is confidential to one of our other clients.

Intellectual Property Rights

Additional definitions

The following definitions shall apply in these Supplier Terms:

- (i) "Platform" means the technology platform and connectivity (as identified in the Order Form) to be provided to you by the Platform Owner pursuant to the Platform Licence(s), and any other IPRs, software, materials or works licensed to you by the Platform Owner under the Platform Licence(s).
- (ii) "Platform Licence" means the valid rights and/or permissions granted (or which may, in the future, be granted) by the Platform Owner (or a relevant licensee of the Platform Owner) to you to use the Platform, and all related IPRs.
- (iii) "Platform Owner" means the Platform owner as identified in the Order Form (or such other person as takes over relevant parts of the business of the foregoing).
- (iv) "Third Party Licence" means the rights and/or permissions granted (or which may, in the future, be granted) by a Third Party Licensor to you for use in connection with the Platform (but excluding IPRs of the Platform Owner).
- (v) "Third Party Licensor" means a third party (other than the Platform Owner) who licenses any software, materials or other IPRs or works to you in connection with the Platform.

KPMG IPR

Subject to the payment of our Charges, we grant you:

- (i) the rights to use our Intellectual Property Rights as set out in clause 11;
- (ii) with effect from the date of delivery (or otherwise making available) of the Deliverables, a nonexclusive, non-transferrable, perpetual, royalty-free (other than the Charges) licence to use those

Deliverables (including any of our IPRs embedded in those Deliverables) for your ordinary business activities; and

- (iii) the rights to use during the Term (on a non-exclusive non-transferable basis), any of our other Intellectual Property Rights which we provide or make available to you in providing the Services, solely to the extent you need to use the same to receive the benefit of the Services during the Term.

The licences granted in clause 11 and paragraph 12.2(ii) and 12.2(iii) shall be revoked if our Charges are not paid in accordance with the Call-Off Terms.

For the purpose of the Call-Off Contract, our Background IPRs include any IPRs licensed to us before the date of the Call-Off Contract and any IPRs that are a development of or an enhancement and/or modification to any IPRs owned by or licensed to us before the date of the Call-Off Contract (howsoever arising, including as a consequence of the Services), and the definition of Background IPRs shall be interpreted accordingly. You will get a licence to use all such Background IPRs in accordance with clauses 11.2 and 11.3.

You may only sub-license or transfer the rights granted under clause 11.2 and paragraph 12.2(ii):

- (i) to a supplier or contractor, solely to the extent necessary and for so long as is necessary for the supply of their services to you, and provided that such supplier or contractor may only use the IPRs for the purposes of those services and may not disclose our IPRs to any other third party; and
- (ii) to any member of your department, agency, commission or other government or public sector body or contracting authority, for as long as they remain a member of your department, agency, commission or other government or public sector body or contracting authority, in each case, only in relation to your ordinary business activities.

If a member of your department, agency, commission or other government or public sector body or contracting authority ceases to be licensed to use the Platform, then the licence under clause 11.2 shall be suspended at that time so far as it relates to use by that member of your department, agency, commission or other government or public sector body or contracting authority. That licence shall be automatically reactivated (with the suspension being lifted without payment of any additional amount and without notice needing to be given) in respect of that member of your department, agency, commission or other government or public sector body or contracting authority with effect from such time as it is (or is again (as applicable)) licensed to use the Platform.

Under clauses 11.3 and 11.4 (and subject to paragraph 12.8) the right to publish IPR as open source shall only apply:

- (i) to Project Specific IPR (excluding any software, which is subject to clause 15 and paragraph 12.9) for your ordinary business purposes;
- (ii) if you give us prior written notice of your intention to publish the Project Specific IPR as open source and we agree (in writing) to the open source licence terms you intend to use; and

(iii) you notify us in writing of any third party with whom you intend to share the Project Specific IPR so that we are aware, as part of our obligations as a regulated entity, of who has access to the Project Specific IPR and we consent to their use of the Project Specific IPR (which we may withhold if such sharing would prejudice our ability to comply with applicable auditor independence requirements or applicable Law).

In accordance with clause 11.4, if we wish to include any third party's IPRs (excluding any IPRs of a KPMG Person) as part of Deliverables or otherwise in relation to the Services, then we shall identify such third party's IPRs and the third party's licence terms which would apply to your use of such third party IPRs (either as direct licensee or a sub-licensee) prior to the inclusion of that third party's IPRs as part of Deliverables or otherwise in relation to the Services, and you agree to comply with (and will procure that any third party who you permit (as allowed under the Call-Off Contract) to access such third party IPRs complies with) the third party licensing terms in respect of the relevant third party's IPRs. In relation to certain third party IPRs we may procure a direct licence for your benefit (which may take the form of a direct licence pursuant to third party rights under our agreement with the third party) and we will discuss this with you if relevant to the specific circumstances of the Services.

We hereby inform you in accordance with clause 11.4 that you cannot, unless specifically set out in the Order Form, publish any third party IPRs or our Background IPRs as open source (however you will still have the other rights to use them in accordance with clause 11), and you hereby confirm such is acceptable to you in accordance with clause 11.4.

In accordance with clause 15.1, we hereby confirm that your right under clause 15 to publish as open source any software created for you shall not apply. You hereby agree that this is acceptable to you.

Although you may use and exploit the Project Specific IPRs (and any of our Background IPRs and third party IPRs) in accordance with the terms of the Call-Off Contract, we will have prepared the Project Specific IPR with the intent that they are used and relied upon by you only and only for the purposes of the Services or as otherwise stated in the Order Form or our Service Description. Accordingly, we do not accept a duty of care to others who may see or use any Project Specific IPRs outside of the scope of the Call-Off Contract and our Services to you (and you shall not inform or infer to any third party that we do).

Buyer IPR

You hereby grant us, or shall procure the grant of, a non-exclusive, worldwide, royalty free, non-transferable, non-sublicensable (other than in accordance with this paragraph 12.10), licence to use your IPRs (or those licensed to you and made available by you to us to provide the Services) solely to the extent necessary and for as long as is necessary in order for us to provide the Services. This licence shall be subject to such limitations as you may notify to us in writing from time to time. We may sub-license our rights to use your IPR to our Subcontractors solely to the extent necessary and for as long as is necessary in order for such Subcontractors to provide their services to us in connection with the Services.

Platform IPR and Licences

The Platform and IPRs in and to the Platform are owned by the Platform Owner and are licensed to you directly by the Platform Owner pursuant to the Platform Licence(s).

You hereby grant us for the Term, or shall procure the grant of, a royalty free, non-transferable, nonexclusive licence to use the Platform solely to the extent necessary and for as long as is necessary in order for us to provide the Services. This licence shall be subject to such limitations as are contained within the Platform Licence(s) as notified to us in writing. We may only sub-license our rights to use the Platform to Subcontractors, and then solely to the extent necessary and for as long as is necessary in order for us to provide the Services to you.

Without prejudice to paragraph 12.12, you shall be responsible for ensuring that the Platform Licence(s):

- (i) remain valid, effectual and fully paid up (where applicable) for the Term;
- (ii) allow you (and any relevant any member of your department, agency, commission or other government or public sector body or contracting authority) to use (on the Platform) such applications and other relevant software as you wish to use to support your respective business purposes; and
- (iii) permit us to use the Platform and provide the rights required by us for the purposes of providing the Services and performing our obligations under the Call-Off Contract.

Third Party IPR and Licences (excluding Platform IPR and Licences)

The IPRs in and to any Third Party Licence(s) are owned by the Third Party Licensor(s) and are licensed to you or any relevant any member of your department, agency, commission or other government or public sector body or contracting authority) directly by the Third Party Licensors.

If we require access to a Third Party Licensor's IPRs in order for us to provide the Services, you hereby grants to us for the Term, or shall procure the grant of, a royalty free, non-transferable, non-exclusive licence to use the Third Party Licensor's IPRs solely to the extent necessary and for as long as is necessary in order for us to provide the Services. This licence shall be subject to such limitations as are contained within the Third Party Licence(s) as notified to us in writing. We may only sub-license our right to use the Third Party Licensor's IPRs to Subcontractors and then solely to the extent necessary and for as long as is necessary in order for us to provide the Services to you.

Without prejudice to paragraph 12.16, you shall be responsible for ensuring that the Third Party Licence(s) remain valid, effectual and fully paid up (where applicable) during the Term.

General

Subject to our confidentiality obligations over your Confidential Information, nothing in the Call-Off Contract shall prevent us from using any know how, ideas or concepts acquired before or during the performance of the Services for any other purpose, including for the avoidance of doubt to provide services similar to the Services to our other clients.

You shall not sub-license, assign or otherwise transfer the use of the whole or any part of our IPRs except as set out in the Call-Off Contract and you are not permitted to use our name, logo or trade-marks (or those of our Subcontractors) without our prior written consent (including any consent which may be stated in the Order Form).

Each Party shall notify the other if it becomes aware of an infringement of the IPRs licensed to it pursuant to the Call-Off Contract.

Neither Party shall delete proprietary information or trade mark or copyright notices (if any) appearing on the other's proprietary documentation or material.

Each Party shall be responsible for the acts and omissions of all sub-licensees in respect of the other Party's IPRs made available to that Party in connection with the Call-Off Contract, in each case as if they were the acts and omissions of that Party to the extent that Party would be liable to the other Party under or in connection with the Call-Off Contract for those acts and omissions.

Where either Party sub-licenses the other's IPRs or discloses the other's Confidential Information as permitted under the Call-Off Contract, it shall inform the recipient that disclosure by them (save for their own internal purposes or where compelled by Law) is not permitted without the disclosing Party's prior written consent,

Where you sub-licenses our IPR or disclose our Confidential Information to any other supplier or contractor in accordance with the terms of the Call-Off Contract you shall inform them that, to the fullest extent permitted by Law, we do not accept any responsibility or liability to them in connection with the Confidential Information, those IPRs or the Services or Deliverables and shall procure that any of your suppliers or contractors do not make any claim against us in this regard.

Independence

To ensure that we are able to comply with applicable auditor independence requirements and applicable Law (including to ensure that we are not auditing our own work or the output of our own work during a specified period), during the Independence Period we require that you notify us as soon as possible if:

- (i) you cease to be a public agency, commission or other government or public sector body or contracting authority;
- (ii) you merge with another agency, commission or other government or public sector body or contracting authority; or
- (iii) a new government agency, commission or other government or public sector body or contracting authority is merged with you so that they will also benefit from or otherwise use the Services or any Deliverables.

In relation to paragraph 12.25, the following defined terms shall apply:

- (i) "Independence Period" means the earlier to end of:
 - (a) the period from the date of the Call-Off Contract to the first Confirmation of Clean Audit thereafter; or (b) such shorter period as we may notify to you if we determine (acting reasonably) that such shorter period allows the independence requirements imposed upon us in under applicable Laws to be met.
- (ii) "Confirmation of Clean Audit" means confirmation by your external auditor of a full financial year's Clean Audit for a financial year commencing after completion of the Services.
- (iii) "Clean Audit" means, in relation to your external audit report, that there are no qualifications or matters of emphasis in that report:
 - (a) that are related to the implementation Deliverables that have been placed in live use; and

- (b) which cite subsisting functional or operational issues in those Deliverables referred to in (a) which have resulted in your ability to generate accurate financial statements being compromised.

IPR Indemnity

We shall indemnify you against any claim of infringement or alleged infringement of a third Party's IPRs in accordance with clause 11.5 (subject to clauses 11.7 and 24) provided you comply with paragraph 10.2 below.

If a claim arises or is threatened against you, or you have reason to suspect that a claim may arise or be threatened, for which we indemnify you under clause 11.5: (i) you shall notify us promptly in writing; (ii) we may assume conduct of the claim; (iii) you shall not compromise or settle the claim without our prior written consent; and (iv) you shall provide us with such information and assistance, at our cost, as we reasonably require.

To reciprocate the indemnity we give to you under clause 11.5, you will, on written demand, fully indemnify us for all Losses which we or our Subcontractors may incur at any time from any claim of infringement or alleged infringement of a third party's IPRs because of:

- (i) the rights you have granted to us under the Call-Off Contract (including in relation to our use or access of your IPR, the Platform or IPRs of your Third Party Licensors in accordance with the Call-Off Contract);
- (ii) your use of the Services or any Deliverables or our IPRs in breach of the Call-Off Contract; or
- (iii) our use, in accordance with the terms of the Call-Off Contract, of any materials, information or data you have provided us.

If a claim arises or is threatened against us, or we have reason to suspect that a claim may arise or be threatened, for which you indemnify us under paragraph 13.3: (i) we shall notify you promptly in writing; (ii) you may assume conduct of the claim; (iii) we shall not compromise or settle the claim without your prior written consent; and (iv) we shall provide you with such information and assistance, at your cost, as you reasonably require.

In addition to the circumstances set out in clause 11.7, the indemnity in clause 11.5 and paragraph 13.3 above shall also not apply to the extent that:

- (i) the claim arises due to compliance by the party giving the indemnity with a documented specification or instructions provided by the other party;
- (ii) the party being indemnified has caused or contributed to the events which gave rise to the claim under the indemnity by acting in breach of the licences or other terms of the Call-Off Contract;
- (iii) the claim results from or is in connection with any alteration or modification of the infringing items by the party being indemnified; or
- (iv) the claim results from the combination, operation or use of any infringing items with any data, equipment, product, system or intellectual property not supplied by or made known to the indemnifying party.

In relation to any IPR which is not licensed by us or our licensors on an on-going basis, the indemnity in clause 11.5 shall only apply to use during the Term.

Protection of Personal Data

We will comply with the obligations in clause 12, however you will be responsible for ensuring that you (and the relevant data controller) comply with your (or the relevant data controller's) obligations under the Data Protection Legislation, including in relation to you instructing us to Process any Personal Data as part of the Services.

Unless specifically stated to be part of the Services, we are not responsible for where any data is hosted or transferred under your hosted environment or cloud service (which you should specify with your hosting or cloud service provider), or where you direct us to transfer or disclose data to a third party (such as one of your other third party suppliers or a separate government body).

Each Party shall answer the other's reasonable enquiries to enable them, in respect of their obligations under clause 12 and this paragraph 14, to monitor the other's compliance and to fulfil their respective obligations under the Call-Off Terms.

You acknowledge we outsource some of our information systems support to other KPMG Persons and to reputable international providers (our "Infrastructure Providers"). We do this in accordance with our rigorous controls and requirements, and we have agreements with them as required by Data Protection Legislation (including data export agreements, because some of our systems may be managed at times from outside the European Economic Area).

In accordance with clause 12.3, you hereby consent to the Processing of Buyer Personal Data by our Subcontractors for the provision of the Services, and by our Infrastructure Providers, provided we ensure that they comply with the Data Protection Legislation and we remain liable to you for compliance with the Call-Off Terms and we oblige them to take equivalent measures when Processing Personal Data to those you require from us under the Call-Off Terms. We can provide further details on our arrangements with such Subcontractors and Infrastructure Providers in relation to any Processing activities that they provide as part of the Services to you.

To reciprocate the indemnity we give to you under clause 10.1, you will during and after the Term keep us fully indemnified against all Losses arising from any breach of your obligations under the Data Protection Legislation or under incorporated Framework clauses 8.78 to 8.86, or under this paragraph 14.

Employment Regulations (TUPE)

If you have reason to believe that the Employment Regulations will apply on the commencement of the

Services or the entry into the Call-Off Contract you shall inform us in writing in advance of us entering into the Call-Off Contract so that both Parties can consider the implication of the Employment Regulations before entering into the Call-Off Contract and, if they choose to enter into the Call-Off Contract, so they can comply with their obligations under the Employment Regulations.

If you do not notify us in accordance with paragraph 15.1, you warrant and represent that the

commencement of the Services and the entry into the Call-Off Contract shall not cause a Relevant Transfer in respect of any of your employees or other workers (or those of any third party associated with or engaged by you, including any Former Supplier).

You agree to indemnify us for any Losses or additional costs or expenses (including unforeseen employment costs (including redundancy costs)) arising from:

if you fail to notify us under paragraph 15.1 and you are in breach of the warranty under paragraph 15.2, the Employment Regulations applying to transfer the employment of any of your employees or other workers (or those of any third party associated with or engaged by you, including any Former Supplier) to us or our Subcontractors;

- (ii) your failure (or the failure of any third party associated with or engaged by you, including any Former Supplier) to comply with your or its obligations under the Employment Obligations and (if applicable) the New Fair Deal; and
- (iii) any claim by any employee or person (or their employment representative) which arises or is alleged to arise from any act or omission by you (or any third party associated with or engaged by you, including any Former Supplier) on or before the date of the Relevant Transfer.

Clauses 29.7 and 29.8 shall apply also in respect of the provisions of this paragraph

Our compliance with law and regulation

The Law and our Regulatory Bodies require us to comply with professional standards, including but not limited to standards requiring independence from our audit clients, ethical behaviour, objectivity, impartiality, strict rules of client confidentiality and 'know your client' checks. Accordingly, we may terminate the Call-Off Contract immediately if: (i) there is a change of Law, rule, regulation or professional standard, or circumstances arise that would cause the relationship between you and us to violate such Law, rule, regulation or professional standard or would prejudice any KPMG Person's ability to comply with applicable auditor independence requirements; or (ii) we believe a conflict of interest cannot be managed but in such a case we shall consult you before we do so. Should such a circumstance arise, we will discuss with you how the Services might be varied so that they can be continued or, if appropriate, arrangements by which our Call-Off Contract can be terminated and handed over to a successor service provider chosen by you.

In relation to the performance of our obligations under the Call-Off Contract, the defined terms "Regulatory Body" and "Regulators Bodies" shall include any organisation or body that has regulatory or professional oversight over our business.

If we are required by any court or Regulatory Body in any proceedings or forum in which we are not a party or participant but you are, or if we are required by a parliamentary select committee or body, to provide information or to produce documents relating in any way to the Services, you shall pay our costs incurred in preparing for and responding to any such requirement at our standard rates applicable at the time of responding, together with outlays including legal expenses, and VAT thereon (where appropriate).

Liability

Where the Call-Off Contract and/or Services are for the benefit of you and one or more Beneficiary (as defined in paragraph 22.3), the limitations on our liability under clause (including incorporated Framework clauses 4.2 – 4.7) shall be in the aggregate and will be apportioned amongst you and the Beneficiaries. Neither you nor a Beneficiary shall dispute or challenge the validity or operation of this paragraph on the grounds that no apportionment has been agreed or that the agreed share of the limitation amount apportioned to any Beneficiary is unreasonably low.

In order to clarify the intention under incorporated Framework clause 4.5, you agree that (subject to the agreed caps on liability) we shall, to the extent the same can be recovered under Law, only be responsible for regulatory Losses or fines arising directly from our breach of any Laws as they apply to us.

You shall not (and you shall procure that no Beneficiary shall) bring any claim against any KPMG Person or Subcontractor except the contracting entity to the Call-Off Contract in respect of Loss or damage suffered by you arising out of or in connection with the Call-Off Contract or the Services. This paragraph is enforceable by any KPMG Person. This restriction shall not operate to limit or exclude the liability of the KPMG contracting party for the acts or omissions of anyone involved in delivering the Services.

If other persons are liable to you for any Losses for which we are also liable, then our liability to you is limited to the sum we ought reasonably to pay having regard to our responsibility for those Losses, on the basis that we will not be liable for Losses that may be attributable to the other persons (whether or not they have limited or excluded their liability). Those other persons will be deemed to have paid to you sums appropriate to their responsibility for such Losses.

Insurance

We have agreed to maintain the insurance policies to the amounts set out in the Order Form and in accordance with the Call-Off Terms. If you require any additional policies under clause 9.3, you must inform us of these requirements in writing before we enter into the Call-Off Contract, and we will set out such requirements in the Order Form.

Under clause 9.2, bullet point two, we will only include an "indemnity to principles" clause for your benefit if this is specifically agreed in the Order Form (as we will need to agree any such provision with our insurers on a case by case basis).

If you do have additional insurance requirements you should discuss these with us, however we are unable to guarantee that we will be able to take out any additional insurance that we did not agree in the Order Form, and you accept that failure to do so shall not be a Default under the Call-Off Terms.

Consequences of termination

On termination of the Call-Off Contract or any part of the Services, you shall pay us the following by way of Charges:

- (i) all Charges that have accrued prior to the date of termination, including for:
 - (a) the Charges for milestones actually accepted by you prior to the effective date of termination; and

(b) a sum for any other work performed on the Services at the effective date of termination which has not previously been invoiced by us. This sum shall be calculated using our rate card and shall be subject to production of reasonable evidence of the work done (provided that this shall not exceed any relevant Charges which have been agreed for the work in question); (ii) except where the termination is by you under clause 18.4 or 18.5:

- (a) a sum in respect of demobilisation of those Supplier Staff engaged in providing the Services (based on our rate card and limited to a period of no more than 30 days after the date of the termination notice);
- (b) our charges for providing the transition assistance agreed pursuant to paragraph 21.3; and
- (c) costs which relate to amounts that we are required to pay (or have paid) to other third party suppliers under contracts entered into by us and which have been entered into in connection with the provision of the Services by us, and which would not have been incurred (or, as applicable, would not have been wasted) had the Call-Off Contract and/or the Services continued until its natural expiry and which are not reasonably avoidable and not reasonably capable of recovery by us.

Where the Call-Off Contract is terminated by us under clause 18.5, then we may require you to make payment on account of any costs under paragraph 19.1 prior to providing any exit assistance.

We shall use our reasonable endeavours to minimise and mitigate the amounts that make up the costs under paragraph 19.1(ii) and will provide you with such reasonable information and supporting documentation as you may reasonably request (excluding the for the avoidance of doubt any Restricted Information) in order to verify that the amounts that make up such costs have been incurred or suffered by us in relation to a relevant termination event.

Assignments and transfers

Under Framework clause 8.35 you may assign, novate or otherwise dispose of your rights and obligations under the Call-Off Contract in certain circumstances. However, in order to enable us to comply with our regulatory requirements to ensure we know who we are providing services to (or are otherwise contracting with), you must inform us in advance of any proposed transfer and we may object to such transfer, acting reasonably, if such transfer would cause you or us to be in breach of Law, the requirements of our Regulatory Body, or cause a conflict of interest or our independence to be impaired.

KPMG Persons (who are not the KPMG contracting entity) may rely upon any rights or protections given them under the Call-Off Contract, and clause 27.1 shall be interpreted accordingly.

Exit Plan

In accordance with clause 21 we will have supplied an exit plan for the migration away from the Services provided by us. The details of this exit plan may be further refined and agreed with you before the date of the Call-Off Contract or in accordance with any process set out in the Order Form.

Unless otherwise specifically agreed in the exit plan, we will provide the services and assistance set out in the exit plan, and in accordance with clause 22.1 will make any data (including Buyer Data and Buyer Personal Data) available to you, however you or your Replacement Supplier (or other

third party engaged by you for any migration services) will be responsible for your overall migration and exit strategy and migration to the Replacement Supplier.

Unless otherwise agreed with you in writing (including in the exit plan) we will charge you for any exit assistance we provide. We can agree these costs (or the charging basis) with you in the exit plan, and in the absence of these being agreed in advance can provide you with an estimate as and when such assistance is required.

Miscellaneous

All warranties and undertakings under the Call-Off Contract are limited to those set out in the Call-Off Contract and any implied terms, conditions, undertakings or warranties whether arising through custom, statute or otherwise are excluded to the fullest extent permitted by the Law.

You shall not, directly or indirectly, solicit the employment of any Supplier Staff involved in performing the Services, during performance or for a period of 6 months following their completion or following termination of the Call-Off Contract, without our prior written consent. This prohibition shall not prevent you at any time from running recruitment advertising campaigns nor from offering employment to any Supplier Staff who may respond to any such campaign.

In these Supplier Terms "Beneficiaries" means any person identified in the Order Form or Call-Off Terms as a beneficiary of the Services or of any Deliverable other than you, and on whose behalf or for whose benefit you enter into the Call-Off Contract or in respect of whom we subsequently agree, at your request, to accept responsibility or liability towards in respect of the Deliverables or the Services (and "Beneficiary" shall be interpreted accordingly). You agree to the provisions of the Call-Off Contract on your own behalf and as agent for any other Beneficiaries.

You shall supply information in response to our enquiries (if any) to enable us to comply with our statutory responsibilities to make disclosures to relevant authorities in respect of money laundering and any other criminal activity that we may encounter during performance of the Services and you accept that any such disclosures may include Confidential Information.

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 those as detailed with the service document appended at Schedule 1.

Both parties agree that the Call-Off Contract charges as per Schedule 2 apply to the work described in this Call-Off Contract, as well as any extensions made as per clause 1.3 of Part B.

Part B - Terms and conditions

1. Call-Off Contract start date and length

- 1.1 The Supplier must start providing the Services on the date specified in the Order Form.
- 1.2 This Call-Off Contract will expire on the Expiry Date in the Order Form. It will be for up to 24 months from the Start Date unless Ended earlier under clause 18 or extended by the Buyer under clause 1.3.
- 1.3 The Buyer can extend this Call-Off Contract, with written notice to the Supplier, by the period in the Order Form, as long as this is within the maximum permitted under the Framework Agreement of 2 periods of up to 12 months each.
- 1.4 The Parties must comply with the requirements under clauses 21.3 to 21.8 if the Buyer reserves the right in the Order Form to extend the contract beyond 24 months.

2. Incorporation of terms

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

- 4.1 (Warranties and representations)
- 4.2 to 4.7 (Liability)
- 4.11 to 4.12 (IR35)
- 5.4 to 5.5 (Force majeure)
- 5.8 (Continuing rights)
- 5.9 to 5.11 (Change of control)
- 5.12 (Fraud)
- 5.13 (Notice of fraud)
- 7.1 to 7.2 (Transparency)
- 8.3 (Order of precedence)
- 8.4 (Relationship)
- 8.7 to 8.9 (Entire agreement)
- 8.10 (Law and jurisdiction)
- 8.11 to 8.12 (Legislative change)
- 8.13 to 8.17 (Bribery and corruption)
- 8.18 to 8.27 (Freedom of Information Act)
- 8.28 to 8.29 (Promoting tax compliance)
- 8.30 to 8.31 (Official Secrets Act)
- 8.32 to 8.35 (Transfer and subcontracting)
- 8.38 to 8.41 (Complaints handling and resolution)
- 8.42 to 8.48 (Conflicts of interest and ethical walls)
- 8.49 to 8.51 (Publicity and branding)
- 8.52 to 8.54 (Equality and diversity)
- 8.57 to 8.58 (data protection)
- 8.62 to 8.63 (Severability)
- 8.64 to 8.77 (Managing disputes and Mediation)
- 8.78 to 8.86 (Confidentiality)

- 8.87 to 8.88 (Waiver and cumulative remedies)
- 8.89 to 8.99 (Corporate Social Responsibility)
- paragraphs 1 to 10 of the Framework Agreement glossary and interpretations
- 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:

- a reference to the 'Framework Agreement' will be a reference to the 'Call-Off Contract'
- a reference to 'CCS' will be a reference to 'the Buyer'
- 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:

- be appropriately experienced, qualified and trained to supply the Services
- apply all due skill, care and diligence in faithfully performing those duties
- obey all lawful instructions and reasonable directions of the Buyer and provide the Services to the reasonable satisfaction of the Buyer
- respond to any enquiries about the Services as soon as reasonably possible
- 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 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:

- have made their own enquiries and are satisfied by the accuracy of any information supplied by the other Party
- are confident that they can fulfil their obligations according to the Call-Off Contract terms
- have raised all due diligence questions before signing the Call-Off Contract
- 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 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:

- 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
- the third-party public and products liability insurance contains an 'indemnity to principals' clause for the Buyer's benefit
- 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
- 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:

- a broker's verification of insurance
- receipts for the insurance premium
- 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:

- take all risk control measures using Good Industry Practice, including the investigation and reports of claims to insurers
 - promptly notify the insurers in writing of any relevant material fact under any insurances
 - 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:
- premiums, which it will pay promptly
 - 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 8.78 to 8.86. 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:
- rights granted to the Buyer under this Call-Off Contract
 - Supplier's performance of the Services
 - 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:
- modify the relevant part of the Services without reducing its functionality or performance
 - 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
 - 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:
- the use of data supplied by the Buyer which the Supplier isn't required to verify under this CallOff Contract
 - 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:

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

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

- complying with a data access request within the timescales in the Data Protection Legislation and following the Buyer's instructions
- providing the Buyer with any Buyer Personal Data it holds about a Data Subject (within the timescales required by the Buyer)
- 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

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

13.1 The Supplier will not store or use Buyer Data except if necessary to fulfil its obligations.

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

13.3 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 policy and all Buyer requirements in the Order Form.

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

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

- the principles in the Security Policy Framework at <https://www.gov.uk/government/publications/security-policy-framework> and the Government Security Classification policy at <https://www.gov.uk/government/publications/governmentsecurity-classifications>
- guidance issued by the Centre for Protection of National Infrastructure on Risk Management at <https://www.cpni.gov.uk/content/adopt-risk-management-approach> and Protection of Sensitive Information and Assets at <https://www.cpni.gov.uk/protection-sensitive-informationand-assets>
- the National Cyber Security Centre's (NCSC) information risk management guidance, available at <https://www.ncsc.gov.uk/collection/risk-management-collection>
- 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, available at <https://www.gov.uk/government/publications/technology-code-ofpractice/technology-code-of-practice>

- the security requirements of cloud services using the NCSC Cloud Security Principles and accompanying guidance at <https://www.ncsc.gov.uk/guidance/implementing-cloud-securityprinciples>
- 13.6 The Buyer will specify any security requirements for this project in the Order Form.
- 13.7 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.
- 13.8 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.
- 13.9 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 available 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:
- 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
 - 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 CCS of any breach of security of CCS'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 CCS and Buyer 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, available at <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:

- an executed Guarantee in the form at Schedule 5
- 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:

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

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

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

- 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
- an Insolvency Event of the other Party happens
- 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:

- any rights, remedies or obligations accrued before its Ending or expiration
- the right of either Party to recover any amount outstanding at the time of Ending or expiry
- 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); 8.42 to 8.48

(Conflicts of interest and ethical walls) and 8.87 to 8.88 (Waiver and cumulative remedies)

- 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:

- return all Buyer Data including all copies of Buyer software, code and any other software licensed by the Buyer to the Supplier under it
- return any materials created by the Supplier under this Call-Off Contract if the IPRs are owned by the Buyer
- 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
- 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

- work with the Buyer on any ongoing work
- 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 | Deemed time of delivery | Proof of service |
|---------------------------|--|---|
| Email | 9am on the first Working Day after sending | Sent by pdf to the correct email address without getting an 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:
- 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
 - there will be no adverse impact on service continuity
 - there is no vendor lock-in to the Supplier's Service at exit
 - 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:
- 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
 - 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
 - the transfer of Project Specific IPR items and other Buyer customisations, configurations and databases to the Buyer or a replacement supplier
 - the testing and assurance strategy for exported Buyer Data
 - if relevant, TUPE-related activity to comply with the TUPE regulations
 - 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:
- data (including Buyer Data), Buyer Personal Data and Buyer Confidential Information in the Supplier's possession, power or control
 - 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:

- Property: for all defaults 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
- Buyer Data: for all defaults resulting in direct loss, destruction, corruption, degradation or damage to any Buyer Data caused by the Supplier's default will not exceed the amount in the Order Form
- Other defaults: for all other defaults, 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:

- comply with any security requirements at the premises and not do anything to weaken the security of the premises
- comply with Buyer requirements for the conduct of personnel
- comply with any health and safety measures implemented by the Buyer
- 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:

- the activities they perform
- age
- start date
- place of work
- notice period
- redundancy payment entitlement
- salary, benefits and pension entitlements
- employment status
- identity of employer
- working arrangements
- outstanding liabilities
- sickness absence
- copies of all relevant employment contracts and related documents
- 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:
- its failure to comply with the provisions of this clause
 - 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:
- work proactively and in good faith with each of the Buyer's contractors
 - 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 8.57 and 8.58 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 8.57 and 8.58 are reproduced in this Call-Off Contract document at schedule 7

Schedule 3 - Collaboration agreement – Not

used

This agreement is made on [enter date]

between:

- 1) [Buyer name] of [Buyer address] (the Buyer)
- 2) [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]
- 3) [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]
- 4) [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]
- 5) [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]
- 6) [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]

together (the Collaboration Suppliers and each of them a Collaboration Supplier).

Whereas the:

- Buyer and the Collaboration Suppliers have entered into the Call-Off Contracts (defined below) for the provision of various IT and telecommunications (ICT) services
- Collaboration Suppliers now wish to provide for the ongoing cooperation of the Collaboration Suppliers in the provision of services under their respective Call-Off Contract to the Buyer

In consideration of the mutual covenants contained in the Call-Off Contracts and this Agreement and intending to be legally bound, the parties agree as follows:

1. Definitions and interpretation

1.1 As used in this Agreement, the capitalised expressions will have the following meanings unless the context requires otherwise:

- “Agreement” means this collaboration agreement, containing the Clauses and Schedules
- “Call-Off Contract” means each contract that is let by the Buyer to one of the Collaboration Suppliers
- “Contractor’s Confidential Information” has the meaning set out in the Call-Off Contracts

- “Confidential Information” means the Buyer Confidential Information or any Collaboration Supplier's Confidential Information
- “Collaboration Activities” means the activities set out in this Agreement
- “Buyer Confidential Information” has the meaning set out in the Call-Off Contract
- “Default” means any breach of the obligations of any Collaboration Supplier or any default, act, omission, negligence or statement of any Collaboration Supplier, its employees, servants, agents or subcontractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Collaboration Supplier is liable (by way of indemnity or otherwise) to the other parties
- “Detailed Collaboration Plan” has the meaning given in clause 3.2
- “Dispute Resolution Process” means the process described in clause 9
- “Effective Date” means [insert date]
- “Force Majeure Event” has the meaning given in clause 11.1.1
- “Mediator” has the meaning given to it in clause 9.3.1
- “Outline Collaboration Plan” has the meaning given to it in clause 3.1
- “Term” has the meaning given to it in clause 2.1
- “Working Day” means any day other than a Saturday, Sunday or public holiday in England and Wales

1.2 General

1.2.1 As used in this Agreement the:

1.2.1.1 masculine includes the feminine and the neuter

1.2.1.2 singular includes the plural and the other way round

1.2.1.3 A reference to any statute, enactment, order, regulation or other similar instrument will be viewed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment.

1.2.2 Headings are included in this Agreement for ease of reference only and will not affect the interpretation or construction of this Agreement.

1.2.3 References to Clauses and Schedules are, unless otherwise provided, references to clauses of and schedules to this Agreement.

1.2.4 Except as otherwise expressly provided in this Agreement, all remedies available to any party under this Agreement are cumulative and may be

exercised concurrently or separately and the exercise of any one remedy will not exclude the exercise of any other remedy.

- 1.2.5 The party receiving the benefit of an indemnity under this Agreement will use its reasonable endeavours to mitigate its loss covered by the indemnity.

2. Term of the agreement

- 2.1 This Agreement will come into force on the Effective Date and, unless earlier terminated in accordance with clause 10, will expire 6 months after the expiry or termination (however arising) of the exit period of the last Call-Off Contract (the “Term”).
- 2.2 A Collaboration Supplier’s duty to perform the Collaboration Activities will continue until the end of the exit period of its last relevant Call-Off Contract.

3. Provision of the collaboration plan

- 3.1 The Collaboration Suppliers will, within 2 weeks (or any longer period as notified by the Buyer in writing) of the Effective Date, provide to the Buyer detailed proposals for the Collaboration Activities they require from each other (the “Outline Collaboration Plan”).
- 3.2 Within 10 Working Days (or any other period as agreed in writing by the Buyer and the Collaboration Suppliers) of [receipt of the proposals] or [the Effective Date], the Buyer will prepare a plan for the Collaboration Activities (the “Detailed Collaboration Plan”). The Detailed Collaboration Plan will include full details of the activities and interfaces that involve all of the Collaboration Suppliers to ensure the receipt of the services under each Collaboration Supplier’s respective [contract] [Call-Off Contract], by the Buyer. The Detailed Collaboration Plan will be based on the Outline Collaboration Plan and will be submitted to the Collaboration Suppliers for approval.
- 3.3 The Collaboration Suppliers will provide the help the Buyer needs to prepare the Detailed Collaboration Plan.
- 3.4 The Collaboration Suppliers will, within 10 Working Days of receipt of the Detailed Collaboration Plan, either:
- 3.4.1 approve the Detailed Collaboration Plan
 - 3.4.2 reject the Detailed Collaboration Plan, giving reasons for the rejection
- 3.5 The Collaboration Suppliers may reject the Detailed Collaboration Plan under clause 3.4.2 only if it is not consistent with their Outline Collaboration Plan in that it imposes additional, more onerous, obligations on them.
- 3.6 If the parties fail to agree the Detailed Collaboration Plan under clause 3.4, the dispute will be resolved using the Dispute Resolution Process.

4. Collaboration activities

- 4.1 The Collaboration Suppliers will perform the Collaboration Activities and all other obligations of this Agreement in accordance with the Detailed Collaboration Plan.

- 4.2 The Collaboration Suppliers will provide all additional cooperation and assistance as is reasonably required by the Buyer to ensure the continuous delivery of the services under the Call-Off Contract.
- 4.3 The Collaboration Suppliers will ensure that their respective subcontractors provide all co-operation and assistance as set out in the Detailed Collaboration Plan.

5. Invoicing

- 5.1 If any sums are due under this Agreement, the Collaboration Supplier responsible for paying the sum will pay within 30 Working Days of receipt of a valid invoice.
- 5.2 Interest will be payable on any late payments under this Agreement under the Late Payment of Commercial Debts (Interest) Act 1998, as amended.

6. Confidentiality

6.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the Collaboration Suppliers acknowledge that any Confidential Information obtained from or relating to the Crown, its servants or agents is the property of the Crown.

6.2 Each Collaboration Supplier warrants that:

- 6.2.1 any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) will only use Confidential Information for the purposes of this Agreement
- 6.2.2 any person employed or engaged by it (in connection with this Agreement) will not disclose any Confidential Information to any third party without the prior written consent of the other party
- 6.2.3 it will take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (except as agreed) or used other than for the purposes of this Agreement by its employees, servants, agents or subcontractors
- 6.2.4 neither it nor any person engaged by it, whether as a servant or a consultant or otherwise, will use the Confidential Information for the solicitation of business from the other or from the other party's servants or consultants or otherwise

6.3 The provisions of clauses 6.1 and 6.2 will not apply to any information which is:

- 6.3.1 or becomes public knowledge other than by breach of this clause 6
- 6.3.2 in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party
- 6.3.3 received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure
- 6.3.4 independently developed without access to the Confidential Information

6.3.5 required to be disclosed by law or by any judicial, arbitral, regulatory or other authority of competent jurisdiction

6.4 The Buyer's right, obligations and liabilities in relation to using and disclosing any Collaboration Supplier's Confidential Information provided under this Agreement and the Collaboration Supplier's right, obligations and liabilities in relation to using and disclosing any of the Buyer's Confidential Information provided under this Agreement, will be as set out in the [relevant contract] [Call-Off Contract].

7. Warranties

7.1 Each Collaboration Supplier warrant and represent that:

7.1.1 it has full capacity and authority and all necessary consents (including but not limited to, if its processes require, the consent of its parent company) to enter into and to perform this Agreement and that this Agreement is executed by an authorised representative of the Collaboration Supplier

7.1.2 its obligations will be performed by appropriately experienced, qualified and trained personnel with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this clause 7) in accordance with its own established internal processes

7.2 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are excluded to the extent permitted by law.

8. Limitation of liability

8.1 None of the parties exclude or limit their liability for death or personal injury resulting from negligence, or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

8.2 Nothing in this Agreement will exclude or limit the liability of any party for fraud or fraudulent misrepresentation.

8.3 Subject always to clauses 8.1 and 8.2, the liability of the Buyer to any Collaboration Suppliers for all claims (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than if made fraudulently), breach of statutory duty or otherwise under this Agreement (excluding Clause 6.4, which will be subject to the limitations of liability set out in the relevant Contract) will be limited to [(£ ,000)].

8.4 Subject always to clauses 8.1 and 8.2, the liability of each Collaboration Supplier for all claims (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than if made fraudulently), breach of statutory duty or otherwise under this Agreement will be limited to [Buyer to specify].

8.5 Subject always to clauses 8.1, 8.2 and 8.6 and except in respect of liability under clause 6 (excluding clause 6.4, which will be subject to the limitations of liability set out in the [relevant contract] [Call-Off Contract]), in no event will any party be liable to any other for:

- 8.5.1 indirect loss or damage
 - 8.5.2 special loss or damage
 - 8.5.3 consequential loss or damage
 - 8.5.4 loss of profits (whether direct or indirect)
 - 8.5.5 loss of turnover (whether direct or indirect)
 - 8.5.6 loss of business opportunities (whether direct or indirect)
 - 8.5.7 damage to goodwill (whether direct or indirect)
- 8.6 Subject always to clauses 8.1 and 8.2, the provisions of clause 8.5 will not be taken as limiting the right of the Buyer to among other things, recover as a direct loss any:
- 8.6.1 additional operational or administrative costs and expenses arising from a Collaboration Supplier's Default
 - 8.6.2 wasted expenditure or charges rendered unnecessary or incurred by the Buyer arising from a Collaboration Supplier's Default

9. Dispute resolution process

- 9.1 All disputes between any of the parties arising out of or relating to this Agreement will be referred, by any party involved in the dispute, to the representatives of the parties specified in the Detailed Collaboration Plan.
- 9.2 If the dispute cannot be resolved by the parties' representatives nominated under clause 9.1 within a maximum of 5 Working Days (or any other time agreed in writing by the parties) after it has been referred to them under clause 9.1, then except if a party seeks urgent injunctive relief, the parties will refer it to mediation under the process set out in clause 9.3 unless the Buyer considers (acting reasonably and considering any objections to mediation raised by the other parties) that the dispute is not suitable for resolution by mediation.
- 9.3 The process for mediation and consequential provisions for mediation are:
- 9.3.1 a neutral adviser or mediator will be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one party to the other parties to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, any party will within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to the parties that he is unable or unwilling to act, apply to the Chairman of the Law Society to appoint a Mediator
 - 9.3.2 the parties will within 10 Working Days of the appointment of the Mediator meet to agree a programme for the exchange of all relevant information and the structure of the negotiations

- 9.3.3 unless otherwise agreed by the parties in writing, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the parties in any future proceedings
- 9.3.4 if the parties reach agreement on the resolution of the dispute, the agreement will be put in writing and will be binding on the parties once it is signed by their authorised representatives
- 9.3.5 failing agreement, any of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. The opinion will be provided on a without prejudice basis and will not be used in evidence in any proceedings relating to this Agreement without the prior written consent of all the parties
- 9.3.6 if the parties fail to reach agreement in the structured negotiations within 20 Working Days of the Mediator being appointed, or any longer period the parties agree on, then any dispute or difference between them may be referred to the courts
- 9.4 The parties must continue to perform their respective obligations under this Agreement and under their respective Contracts pending the resolution of a dispute.

10. Termination and consequences of termination

10.1 Termination

- 10.1.1 The Buyer has the right to terminate this Agreement at any time by notice in writing to the Collaboration Suppliers whenever the Buyer has the right to terminate a Collaboration Supplier's [respective contract] [Call-Off Contract].
- 10.1.2 Failure by any of the Collaboration Suppliers to comply with their obligations under this Agreement will constitute a Default under their [relevant contract] [Call-Off Contract]. In this case, the Buyer also has the right to terminate by notice in writing the participation of any Collaboration Supplier to this Agreement and sever its name from the list of Collaboration Suppliers, so that this Agreement will continue to operate between the Buyer and the remaining Collaboration Suppliers.

10.2 Consequences of termination

- 10.2.1 Subject to any other right or remedy of the parties, the Collaboration Suppliers and the Buyer will continue to comply with their respective obligations under the [contracts] [Call-Off Contracts] following the termination (however arising) of this Agreement.
- 10.2.2 Except as expressly provided in this Agreement, termination of this Agreement will be without prejudice to any accrued rights and obligations under this Agreement.

11. General provisions

11.1 Force majeure

- 11.1.1 For the purposes of this Agreement, the expression “Force Majeure Event” will mean any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to any party, the party’s personnel or any other failure of a Subcontractor.
- 11.1.2 Subject to the remaining provisions of this clause 11.1, any party to this Agreement may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.
- 11.1.3 A party cannot claim relief if the Force Majeure Event or its level of exposure to the event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 11.1.4 The affected party will immediately give the other parties written notice of the Force Majeure Event. The notification will include details of the Force Majeure Event together with evidence of its effect on the obligations of the affected party, and any action the affected party proposes to take to mitigate its effect.
- 11.1.5 The affected party will notify the other parties in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following the notification, this Agreement will continue to be performed on the terms existing immediately before the Force Majeure Event unless agreed otherwise in writing by the parties.

11.2 Assignment and subcontracting

- 11.2.1 Subject to clause 11.2.2, the Collaboration Suppliers will not assign, transfer, novate, sub-license or declare a trust in respect of its rights under all or a part of this Agreement or the benefit or advantage without the prior written consent of the Buyer.
- 11.2.2 Any subcontractors identified in the Detailed Collaboration Plan can perform those elements identified in the Detailed Collaboration Plan to be performed by the subcontractors.

11.3 Notices

- 11.3.1 Any notices given under or in relation to this Agreement will be deemed to have been properly delivered if sent by recorded or registered post or by fax and will be deemed for the purposes of this Agreement to have been given or made at

the time the letter would, in the ordinary course of post, be delivered or at the time shown on the sender's fax transmission report.

- 11.3.2 For the purposes of clause 11.3.1, the address of each of the parties are those in the Detailed Collaboration Plan.

11.4 Entire agreement

11.4.1 This Agreement, together with the documents and agreements referred to in it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the Parties about this.

11.4.2 Each of the parties agrees that in entering into this Agreement and the documents and agreements referred to in it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to each party in respect of any statements, representation, warranty or understanding will be for breach of contract under the terms of this Agreement.

11.4.3 Nothing in this clause 11.4 will exclude any liability for fraud.

11.5 Rights of third parties

11.5.1 Nothing in this Agreement will grant any right or benefit to any person other than the parties or their respective successors in title or assignees, or entitle a third party to enforce any provision and the parties do not intend that any term of this Agreement should be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

11.6 Severability

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, that provision will be severed without effect to the remaining provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, the parties will immediately commence good faith negotiations to remedy that invalidity.

11.7 Variations

No purported amendment or variation of this Agreement or any provision of this Agreement will be effective unless it is made in writing by the parties.

11.8 No waiver

The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law will not constitute a waiver of that right, power or remedy. If a party

waives a breach of any provision of this Agreement this will not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.

11.9 Governing law and jurisdiction

This Agreement will be governed by and construed in accordance with English law and without prejudice to the Dispute Resolution Process, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

Executed and delivered as an agreement by the parties or their duly authorised attorneys the day and year first above written.

For and on behalf of the Buyer

Signed by:

Full name (capitals):

Position:

Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position:

Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position:

Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position:

Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position:

Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position:

Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position:

Date:

Collaboration Agreement Schedule 1 - List of contracts

| Collaboration supplier | Name/reference of contract | Effective date of contract |
|------------------------|----------------------------|----------------------------|
| | | |
| | | |
| | | |
| | | |

[Collaboration Agreement Schedule 2 - Outline collaboration plan]

Schedule 4 - Alternative clauses – Not used

1. Introduction

1.1 This Schedule specifies the alternative clauses that may be requested in the Order Form and, if requested in the Order Form, will apply to this Call-Off Contract.

2. Clauses selected

2.1 The Customer may, in the Order Form, request the following alternative clauses:

2.1.1 Scots Law (see paragraph 2.1.2 of this Schedule)

2.1.2 Scots Law

Law and Jurisdiction

References to England and Wales in incorporated Framework Agreement clause 8.10 (Law and Jurisdiction) of this Call-Off Contract will be replaced with Scotland and the wording of the Framework Agreement and Call-Off Contract will be interpreted as closely as possible to the original English and Welsh Law intention despite Scots Law applying.

Reference to England and Wales in Working Days definition within the Glossary and interpretations section will be replaced with Scotland.

References to the Contracts (Rights of Third Parties) Act 1999 will be removed in clause 27.1

Reference to the Freedom of Information Act 2000 within the defined terms for 'FoIA/Freedom of Information Act' to be replaced with Freedom of Information (Scotland) Act 2002.

Reference to the Supply of Goods and Services Act 1982 will be removed in incorporated Framework Agreement clause 4.2.

References to "tort" will be replaced with "delict" throughout.

2.2 The Customer may, in the Order Form, request the following Alternative Clauses:

2.2.1 Northern Ireland Law (see paragraph 2.3, 2.4, 2.5, 2.6 and 2.7 of this Schedule)

2.3 Discrimination

2.3.1 The Supplier will comply with all applicable fair employment, equality of treatment and anti-discrimination legislation, including, in particular, the Employment (Northern Ireland) Order 2002, the Fair Employment and Treatment (Northern Ireland) Order 1998, the Sex Discrimination (Northern Ireland) Order 1976 and 1988, the Employment Equality

(Sexual Orientation) Regulations (Northern Ireland) 2003, the Equal Pay Act (Northern Ireland) 1970, the Disability Discrimination Act 1995, the Race Relations (Northern Ireland) Order 1997, the Employment Relations (Northern Ireland) Order 1999 and Employment Rights (Northern Ireland) Order 1996 Employment Equality (Age) Regulations (Northern Ireland) 2006; Part-time Workers (Prevention of less Favourable Treatment) Regulation 2000; Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, The Disability Discrimination (Northern Ireland) Order 2006, The Employment Relations (Northern Ireland) Order 2004, The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006, The Employment Relations (Northern Ireland) Order 2004 and The Work and Families (Northern Ireland) Order 2006; and will use his best endeavours to ensure that in his employment policies and practices and in the delivery of the services required of the Supplier under this Call-Off Contract he promotes equality of treatment and opportunity between:

- a. persons of different religious beliefs or political opinions
- b. men and women or married and unmarried persons
- c. persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave)
- d. persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997)
- e. persons with and without a disability (within the meaning of the Disability Discrimination Act 1995)
- f. persons of different ages
- g. persons of differing sexual orientation

2.3.2 The Supplier will take all reasonable steps to secure the observance of clause 2.3.1 of this Schedule by all Supplier Staff.

2.4 Equality policies and practices

2.4.1 The Supplier will introduce and will procure that any Subcontractor will also introduce and implement an equal opportunities policy in accordance with guidance from and to the satisfaction of the Equality Commission. The Supplier will review these policies on a regular basis (and will procure that its

Subcontractors do likewise) and the Customer will be entitled to receive upon request a copy of the policy.

2.4.2 The Supplier will take all reasonable steps to ensure that all of the Supplier Staff comply with its equal opportunities policies (referred to in clause 2.3 above). These steps will include:

- a. the issue of written instructions to staff and other relevant persons
- b. the appointment or designation of a senior manager with responsibility for equal opportunities
- c. training of all staff and other relevant persons in equal opportunities and harassment matters
- d. the inclusion of the topic of equality as an agenda item at team, management and staff meetings

The Supplier will procure that its Subcontractors do likewise with their equal opportunities policies.

2.4.3 The Supplier will inform the Customer as soon as possible in the event of:

- a. the Equality Commission notifying the Supplier of an alleged breach by it or any Subcontractor (or any of their shareholders or directors) of the Fair Employment and Treatment (Northern Ireland) Order 1998 or
- b. any finding of unlawful discrimination (or any offence under the Legislation mentioned in clause 2.3 above) being made against the Supplier or its Subcontractors during the Call-Off Contract Period by any Industrial or Fair Employment Tribunal or Court,

The Supplier will take any necessary steps (including the dismissal or replacement of any relevant staff or Subcontractor(s)) as the Customer directs and will seek the advice of the Equality Commission in order to prevent any offence or repetition of the unlawful discrimination as the case may be.

2.4.4 The Supplier will monitor (in accordance with guidance issued by the Equality Commission) the composition of its workforce and applicants for employment and will provide an annual report on the composition of the workforce and applicants to the Customer. If the monitoring reveals under-representation or lack of fair participation of particular groups, the Supplier will review the operation of its relevant policies and take positive action if appropriate. The Supplier will impose on its Subcontractors obligations similar to those undertaken by it in this clause 2.4 and will procure that those Subcontractors comply with their obligations.

2.4.5 The Supplier will provide any information the Customer requests (including information requested to be provided by any Subcontractors) for the purpose of

assessing the Supplier's compliance with its obligations under clauses 2.4.1 to 2.4.5 of this Schedule.

2.5 Equality

- 2.5.1 The Supplier will, and will procure that each Subcontractor will, in performing its/their obligations under this Call-Off Contract (and other relevant agreements), comply with the provisions of Section 75 of the Northern Ireland Act 1998, as if they were a public authority within the meaning of that section.
- 2.5.2 The Supplier acknowledges that the Customer must, in carrying out its functions, have due regard to the need to promote equality of opportunity as contemplated by the Northern Ireland Act 1998 and the Supplier will use all reasonable endeavours to assist (and to ensure that relevant Subcontractor helps) the Customer in relation to same.

2.6 Health and safety

- 2.6.1 The Supplier will promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Call-Off Contract. The Customer will promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer premises and which may affect the Supplier in the performance of its obligations under the Call-Off Contract.
- 2.6.2 While on the Customer premises, the Supplier will comply with any health and safety measures implemented by the Customer in respect of Supplier Staff and other persons working there.
- 2.6.3 The Supplier will notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Call-Off Contract on the Customer premises if that incident causes any personal injury or damage to property which could give rise to personal injury.
- 2.6.4 The Supplier will comply with the requirements of the Health and Safety at Work (Northern Ireland) Order 1978 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Supplier Staff and other persons working on the Customer premises in the performance of its obligations under the Call-Off Contract.
- 2.6.5 The Supplier will ensure that its health and safety policy statement (as required by the Health and Safety at Work (Northern Ireland) Order 1978) is made available to the Customer on request.

2.7 Criminal damage

- 2.7.1 The Supplier will maintain standards of vigilance and will take all precautions as advised by the Criminal Damage (Compensation) (Northern Ireland) Order 1977 or as may be recommended by the police or the Northern Ireland Office (or, if replaced, their successors) and will compensate the Customer for any loss arising directly from a breach of this obligation (including any diminution of monies received by the Customer under any insurance policy).
- 2.7.2 If during the Call-Off Contract Period any assets (or any part thereof) is or are damaged or destroyed by any circumstance giving rise to a claim for compensation under the provisions of the Compensation Order the following provisions of this clause 2.7 will apply.
- 2.7.3 The Supplier will make (or will procure that the appropriate organisation make) all appropriate claims under the Compensation Order as soon as possible after the CDO Event and will pursue any claim diligently and at its cost. If appropriate, the Customer will also make and pursue a claim diligently under the Compensation Order. Any appeal against a refusal to meet any claim or against the amount of the award will be at the Customer's cost and the Supplier will (at no additional cost to the Customer) provide any help the Customer reasonably requires with the appeal.
- 2.7.4 The Supplier will apply any compensation paid under the Compensation Order in respect of damage to the relevant assets towards the repair, reinstatement or replacement of the assets affected.

Schedule 5 – Guarantee – Not Used

This deed of guarantee is made on [insert date date/month/year] between:

(1) [Insert the name of the Guarantor] a company incorporated in England and Wales with number [insert company number] whose registered office is at [insert details of the guarantor's registered office] [or a company incorporated under the Laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details]] ('Guarantor'); in favour of

and

(2) The Buyer whose offices are [insert Buyer's official address] ('Beneficiary') **Whereas:**

(A) The guarantor has agreed, in consideration of the Buyer entering into the Call-Off Contract with the Supplier, to guarantee all of the Supplier's obligations under the Call-Off Contract.

(B) It is the intention of the Parties that this document be executed and take effect as a deed.

| | |
|----------------------------------|--|
| Guarantor company | [Company name] ' Guarantor ' |
| Guarantor company address | [Company address] |
| Account manager: | Name: [Account Manager name] |
| | Address: [Account Manager address] |
| | Phone: [Account Manager phone] |
| | Email: [Account Manager email] |
| | Fax: [Account Manager fax (if applicable)] |

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In consideration of the Buyer entering into the Call-Off Contract, the Guarantor agrees with the Buyer as follows:

Definitions and interpretation

In this Deed of Guarantee, unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms will have the same meaning as they have for the purposes of the Call-Off Contract.

| Term | Meaning |
|-------------------------------|--|
| Call-Off Contract | Means [the Guaranteed Agreement] made between the Buyer and the Supplier on [insert date]. |
| Guaranteed Obligations | Means all obligations and liabilities of the Supplier to the Buyer under the Call Off Contract together with all obligations owed by the Supplier to the Buyer that are supplemental to, incurred under, ancillary to or calculated by reference to the Call-Off Contract. |
| Guarantee | Means the deed of guarantee described in the Order Form (Parent Company Guarantee). |

References to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Call-Off Contract) apply now, and as amended, varied, restated, supplemented, substituted or novated in the future.

Unless the context otherwise requires, words importing the singular are to include the plural and vice versa.

References to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect.

The words 'other' and 'otherwise' are not to be construed as confining the meaning of any following words to the class of thing previously stated if a wider construction is possible.

Unless the context otherwise requires:

- reference to a gender includes the other gender and the neuter
- references to an Act of Parliament, statutory provision or statutory instrument also apply if amended, extended or re-enacted from time to time
- any phrase introduced by the words 'including', 'includes', 'in particular', 'for example' or similar, will be construed as illustrative and without limitation to the generality of the related general words

References to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee.

References to liability are to include any liability whether actual, contingent, present or future.

Guarantee and indemnity

The Guarantor irrevocably and unconditionally guarantees that the Supplier duly performs all of the guaranteed obligations due by the Supplier to the Buyer.

If at any time the Supplier will fail to perform any of the guaranteed obligations, the Guarantor irrevocably and unconditionally undertakes to the Buyer it will, at the cost of the Guarantor:

- fully perform or buy performance of the guaranteed obligations to the Buyer
- as a separate and independent obligation and liability, compensate and keep the Buyer compensated against all losses and expenses which may result from a failure by the Supplier to perform the guaranteed obligations under the Call-Off Contract

As a separate and independent obligation and liability, the Guarantor irrevocably and unconditionally undertakes to compensate and keep the Buyer compensated on demand against all losses and expenses of whatever nature, whether arising under statute, contract or at common Law, if any obligation guaranteed by the guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the guarantor's liability will be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

Obligation to enter into a new contract

If the Call-Off Contract is terminated or if it is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable, the Guarantor will, at the request of the Buyer, enter into a Contract with the Buyer in the same terms as the Call-Off Contract and the obligations of the Guarantor under such substitute agreement will be the same as if the Guarantor had been original obligor under the Call-Off Contract or under an agreement entered into on the same terms and at the same time as the Call-Off Contract with the Buyer.

Demands and notices

Any demand or notice served by the Buyer on the Guarantor under this Deed of Guarantee will be in writing, addressed to:

[Address of the Guarantor in England and Wales]

[Email address of the Guarantor

representative] For the Attention of [insert details]

or such other address in England and Wales as the Guarantor has notified the Buyer in writing as being an address for the receipt of such demands or notices.

Any notice or demand served on the Guarantor or the Buyer under this Deed of Guarantee will be deemed to have been served if:

- delivered by hand, at the time of delivery
- posted, at 10am on the second Working Day after it was put into the post
- sent by email, at the time of despatch, if despatched before 5pm on any Working Day, and in any other case at 10am on the next Working Day

In proving Service of a notice or demand on the Guarantor or the Buyer, it will be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the fax message was properly addressed and despatched.

Any notice purported to be served on the Buyer under this Deed of Guarantee will only be valid when received in writing by the Buyer.

Beneficiary's protections

The Guarantor will not be discharged or released from this Deed of Guarantee by:

- any arrangement made between the Supplier and the Buyer (whether or not such arrangement is made with the assent of the Guarantor)
- any amendment to or termination of the Call-Off Contract
- any forbearance or indulgence as to payment, time, performance or otherwise granted by the Buyer (whether or not such amendment, termination, forbearance or indulgence is made with the assent of the Guarantor)
- the Buyer doing (or omitting to do) anything which, but for this provision, might exonerate the Guarantor

This Deed of Guarantee will be a continuing security for the Guaranteed Obligations and accordingly:

- it will not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Buyer in exercising its rights under this Deed of Guarantee
- it will not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Buyer, the Guarantor or any other person
- if, for any reason, any of the Guaranteed Obligations is void or unenforceable against the Supplier, the Guarantor will be liable for that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor
- the rights of the Buyer against the Guarantor under this Deed of Guarantee are in addition to, will not be affected by and will not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Buyer

The Buyer will be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes. The making of a demand (whether effective, partial or defective) relating to the breach or non-performance by the Supplier of any Guaranteed Obligation will not preclude the Buyer from making a further demand relating to the same or some other Default regarding the same Guaranteed Obligation.

The Buyer will not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to:

- obtain judgment against the Supplier or the Guarantor or any third party in any court
- make or file any claim in a bankruptcy or liquidation of the Supplier or any third party
- take any action against the Supplier or the Guarantor or any third party
- resort to any other security or guarantee or other means of payment

No action (or inaction) by the Buyer relating to any such security, guarantee or other means of payment will prejudice or affect the liability of the Guarantor.

The Buyer's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by Law. The Buyer's rights may be exercised as often as the Buyer deems expedient.

Any waiver by the Buyer of any terms of this Deed of Guarantee, or of any Guaranteed Obligations, will only be effective if given in writing and then only for the purpose and upon the terms and conditions on which it is given.

Any release, discharge or settlement between the Guarantor and the Buyer will be conditional upon no security, disposition or payment to the Buyer by the Guarantor or any other person being void, set aside or ordered to be refunded following any enactment or Law relating to liquidation, administration or insolvency or for any other reason. If such condition will not be fulfilled, the Buyer will be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Buyer will be entitled

to retain this security before and after the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Buyer from the Guarantor for such period as the Buyer may determine.

Representations and warranties

The Guarantor hereby represents and warrants to the Buyer that:

- the Guarantor is duly incorporated and is a validly existing company under the Laws of its place of incorporation
- has the capacity to sue or be sued in its own name
- the Guarantor has power to carry on its business as now being conducted and to own its Property and other assets
- the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee
- the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including entry into and performance of a Call-Off Contract following Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
 - the Guarantor's memorandum and articles of association or other equivalent constitutional documents, any existing Law, statute, rule or Regulation or any judgment, decree or permit to which the Guarantor is subject
 - the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets
 - all governmental and other authorisations, approvals, licences and consents, required or desirable

This Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

Payments and set-off

All sums payable by the Guarantor under this Deed of Guarantee will be paid without any set-off, lien or counterclaim, deduction or withholding, except for those required by Law. If any deduction or withholding must be made by Law, the Guarantor will pay that additional amount to ensure that the Buyer receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

The Guarantor will pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

The Guarantor will reimburse the Buyer for all legal and other costs (including VAT) incurred by the Buyer in connection with the enforcement of this Deed of Guarantee.

Guarantor's acknowledgement

The Guarantor warrants, acknowledges and confirms to the Buyer that it has not entered into this Deed of Guarantee in reliance upon the Buyer nor been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by, or on behalf of the Buyer, (whether express or implied and whether following statute or otherwise) which is not in this Deed of Guarantee.

Assignment

The Buyer will be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer will not release the Guarantor from its liability under this Guarantee.

The Guarantor may not assign or transfer any of its rights or obligations under this Deed of Guarantee.

Severance

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the remainder of the provisions will continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

Third-party rights

A person who is not a Party to this Deed of Guarantee will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than following that Act.

Governing law

This Deed of Guarantee, and any non-Contractual obligations arising out of or in connection with it, will be governed by and construed in accordance with English Law.

The Guarantor irrevocably agrees for the benefit of the Buyer that the courts of England will have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

Nothing contained in this Clause will limit the rights of the Buyer to take proceedings against the Guarantor in any other court of competent jurisdiction, nor will the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable Law).

The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

[The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its

registered office or on fax number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, Service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Buyer in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the Service of notices and demands, Service of process or any other legal summons served in such way.]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert names]

Director

Director/Secretary

Schedule 6 - Glossary and interpretations

In this Call-Off Contract the following expressions mean:

| Expression | Meaning |
|----------------------------|---|
| Additional Services | Any services ancillary to the G-Cloud Services that are in the scope of Framework Agreement Section 2 (Services Offered) which a Buyer may request. |
| Admission Agreement | The agreement to be entered into to enable the Supplier to participate in the relevant Civil Service pension scheme(s). |
| Application | The response submitted by the Supplier to the Invitation to Tender (known as the Invitation to Apply on the Digital Marketplace). |
| Audit | An audit carried out under the incorporated Framework Agreement clauses specified by the Buyer in the Order (if any). |

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| Background IPRs | <p>For each Party, IPRs:</p> <ul style="list-style-type: none"> • owned by that Party before the date of this Call-Off Contract (as may be enhanced and/or modified but not as a consequence of the Services) including IPRs contained in any of the Party's Know-How, documentation and processes • created by the Party independently of this Call-Off Contract, or <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> |
| Buyer | The contracting authority ordering services as set out in the Order Form. |
| Buyer Data | All data supplied by the Buyer to the Supplier including Personal Data and Service Data that is owned and managed by the Buyer. |
| Buyer Personal Data | The personal data supplied by the Buyer to the Supplier for purposes of, or in connection with, this Call-Off Contract. |
| Buyer Representative | The representative appointed by the Buyer under this Call-Off Contract. |
| Buyer Software | Software owned by or licensed to the Buyer (other than under this Agreement), which is or will be used by the Supplier to provide the Services. |
| Call-Off Contract | This call-off contract entered into following the provisions of the Framework Agreement for the provision of Services made between the Buyer and the Supplier comprising the Order Form, the Call-Off terms and conditions, the Call-Off schedules and the Collaboration Agreement. |
| Charges | The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under this Call-Off Contract. |
| Collaboration Agreement | An agreement, substantially in the form set out at Schedule 3, between the Buyer and any combination of the Supplier and contractors, to ensure collaborative working in their delivery of the Buyer's Services and to ensure that the Buyer receives end-to-end services across its IT estate. |
| Commercially Sensitive Information | Information, which the Buyer has been notified about by the Supplier in writing before the Start Date with full details of why the Information is deemed to be commercially sensitive. |

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| Confidential Information | Data, personal data and any information, which may include (but isn't limited to) any: <ul style="list-style-type: none"> • information about business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above • other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential'). |
| Control | 'Control' as defined in section 1124 and 450 of the Corporation Tax Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly. |
| Controller | Takes the meaning given in the GDPR. |
| Crown | The government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies carrying out functions on its behalf. |
| Data Loss Event | event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Framework Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach |
| Data Protection Impact Assessment | An assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data. |
| Data Protection Legislation (DPL) | Data Protection Legislation means: <ul style="list-style-type: none"> i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to Processing of personal data and privacy; iii) all applicable Law about the Processing of personal data and privacy including if applicable legally binding guidance and codes of practice issued by the Information Commissioner. |
| Data Subject | Takes the meaning given in the GDPR |

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| Default | <p>Default is any:</p> <ul style="list-style-type: none"> • breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term) • other default, negligence or negligent statement of the Supplier, of its Subcontractors or any Supplier Staff (whether by act or omission), in connection with or in relation to this Call-Off Contract <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> |
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| Deliverable(s) | The G-Cloud Services the Buyer contracts the Supplier to provide under this Call-Off Contract. |
| Digital Marketplace | The government marketplace where Services are available for Buyers to buy. (https://www.digitalmarketplace.service.gov.uk/) |
| DPA 2018 | Data Protection Act 2018. |
| Employment Regulations | The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) ('TUPE') which implements the Acquired Rights Directive. |
| End | Means to terminate; and Ended and Ending are construed accordingly. |
| Environmental Information Regulations or EIR | The Environmental Information Regulations 2004 together with any guidance or codes of practice issued by the Information Commissioner or relevant Government department about the regulations. |
| Equipment | The Supplier's hardware, computer and telecoms devices, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from CCS or the Buyer) in the performance of its obligations under this Call-Off Contract. |
| ESI Reference Number | The 14 digit ESI reference number from the summary of outcome screen of the ESI tool. |
| Employment Status Indicator test tool or ESI tool | The HMRC Employment Status Indicator test tool. The most up-to-date version must be used. At the time of drafting the tool may be found here: http://tools.hmrc.gov.uk/esi |
| Expiry Date | The expiry date of this Call-Off Contract in the Order Form. |

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| Force Majeure | <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"> ● acts, events or omissions beyond the reasonable control of the affected Party ● riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare ● acts of government, local government or Regulatory Bodies ● fire, flood or disaster and any failure or shortage of power or fuel ● industrial dispute affecting a third party for which a substitute third party isn't reasonably available <p>The following do not constitute a Force Majeure event:</p> <ul style="list-style-type: none"> ● any industrial dispute about the Supplier, its staff, or failure in the Supplier's (or a Subcontractor's) supply chain ● any event which is attributable to the wilful act, neglect or failure to take reasonable precautions by the Party seeking to rely on Force Majeure ● the event was foreseeable by the Party seeking to rely on Force Majeure at the time this Call-Off Contract was entered into ● any event which is attributable to the Party seeking to rely on Force Majeure and its failure to comply with its own business continuity and disaster recovery plans |
| Former Supplier | A supplier supplying services to the Buyer before the Start Date that are |
| | the same as or substantially similar to the Services. This also includes any Subcontractor or the Supplier (or any subcontractor of the Subcontractor). |
| Framework Agreement | The clauses of framework agreement RM1557.11 together with the Framework Schedules. |
| Fraud | Any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Crown. |
| Freedom of Information Act or FoIA | The Freedom of Information Act 2000 and any subordinate legislation made under the Act together with any guidance or codes of practice issued by the Information Commissioner or relevant Government department in relation to the legislation. |

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| G-Cloud Services | The cloud services described in Framework Agreement Section 2 (Services Offered) as defined by the Service Definition, the Supplier Terms and any related Application documentation, which the Supplier must make available to CCS and Buyers and those services which are deliverable by the Supplier under the Collaboration Agreement. |
| GDPR | The General Data Protection Regulation (Regulation (EU) 2016/679). |
| Good Industry Practice | Standards, practices, methods and process conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar undertaking in the same or similar circumstances. |
| Government Procurement Card | The Government's preferred method of purchasing and payment for low value goods or services https://www.gov.uk/government/publications/government-procurementcard--2 . |
| Guarantee | The guarantee described in Schedule 5. |
| Guidance | Any current UK Government Guidance on the Public Contracts Regulations 2015. In the event of a conflict between any current UK Government Guidance and the Crown Commercial Service Guidance, current UK Government Guidance will take precedence. |
| Implementation Plan | The plan with an outline of processes (including data standards for migration), costs (for example) of implementing the services which may be required as part of Onboarding. |
| Indicative Test | ESI tool completed by contractors on their own behalf at the request of CCS or the Buyer (as applicable) under clause 4.6. |
| Information | Has the meaning given under section 84 of the Freedom of Information Act 2000. |
| Information Security Management System | The information security management system and process developed by the Supplier in accordance with clause 16.1. |
| Inside IR35 | Contractual engagements which would be determined to be within the scope of the IR35 Intermediaries legislation if assessed using the ESI tool. |
| Insolvency Event | Can be: <ul style="list-style-type: none"> • a voluntary arrangement • a winding-up petition • the appointment of a receiver or administrator • an unresolved statutory demand • a Schedule A1 moratorium. |

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| Intellectual Property Rights or IPR | <p>Intellectual Property Rights are:</p> <ul style="list-style-type: none"> • copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information • applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction • all other rights having equivalent or similar effect in any country or jurisdiction |
| Intermediary | <p>For the purposes of the IR35 rules an intermediary can be:</p> <ul style="list-style-type: none"> • the supplier's own limited company • a service or a personal service company • a partnership <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> |
| IPR Claim | As set out in clause 11.5. |
| IR35 | IR35 is also known as 'Intermediaries legislation'. It's a set of rules that affect tax and National Insurance where a Supplier is contracted to work for a client through an Intermediary. |
| IR35 Assessment | Assessment of employment status using the ESI tool to determine if engagement is Inside or Outside IR35. |
| Know-How | All ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the G-Cloud Services but excluding know-how already in the Supplier's or CCS's possession before the Start Date. |
| Law | Any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, judgment of a relevant court of law, or directives or requirements of any Regulatory Body. |
| LED | Law Enforcement Directive (EU) 2016/680. |
| Loss | All losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including |
| | negligence), breach of statutory duty, misrepresentation or otherwise and ' Losses ' will be interpreted accordingly. |

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| Lot | Any of the 3 Lots specified in the ITT and Lots will be construed accordingly. |
| Malicious Software | Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence. |
| Management Charge | The sum paid by the Supplier to CCS being an amount of up to 1% but currently set at 0.75% of all Charges for the Services invoiced to Buyers (net of VAT) in each month throughout the duration of the Framework Agreement and thereafter, until the expiry or End of any Call-Off Contract. |
| Management Information | The management information specified in Framework Agreement section 6 (What you report to CCS). |
| Material Breach | Those breaches which have been expressly set out as a material breach and any other single serious breach or persistent failure to perform as required under this Call-Off Contract. |
| Ministry of Justice Code | The Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000. |
| New Fair Deal | The revised Fair Deal position in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 as amended. |
| Order | An order for G-Cloud Services placed by a Contracting Body with the Supplier in accordance with the Ordering Processes. |
| Order Form | The order form set out in Part A of the Call-Off Contract to be used by a Buyer to order G-Cloud Services. |
| Ordered G-Cloud Services | G-Cloud Services which are the subject of an Order by the Buyer. |
| Outside IR35 | Contractual engagements which would be determined to not be within the scope of the IR35 intermediaries legislation if assessed using the ESI tool. |
| Party | The Buyer or the Supplier and 'Parties' will be interpreted accordingly. |
| Personal Data | Takes the meaning given in the GDPR. |
| Personal Data Breach | Takes the meaning given in the GDPR. |
| Processing | Takes the meaning given in the GDPR |

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| Processor | Takes the meaning given in the GDPR. |
| Prohibited Act | To directly or indirectly offer, promise or give any person working for or engaged by a Buyer or CCS a financial or other advantage to: <ul style="list-style-type: none"> ● induce that person to perform improperly a relevant function or activity ● reward that person for improper performance of a relevant function or activity ● commit any offence: <ul style="list-style-type: none"> ○ under the Bribery Act 2010 ○ under legislation creating offences concerning Fraud ○ at common Law concerning Fraud ○ committing or attempting or conspiring to commit Fraud |
| Project Specific IPRs | Any intellectual property rights in items created or arising out of the performance by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call-Off Contract including databases, configurations, code, instructions, technical documentation and schema but not including the Supplier's Background IPRs. |
| Property | Assets and property including technical infrastructure, IPRs and equipment. |
| Protective Measures | Appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it. |
| PSN or Public Services Network | The Public Services Network (PSN) is the Government's high performance network which helps public sector organisations work together, reduce duplication and share resources. |
| Regulatory Body or Bodies | Government departments and other bodies which, whether under statute, codes of practice or otherwise, are entitled to investigate or influence the matters dealt with in this Call-Off Contract. |
| Relevant Person | Any employee, agent, servant, or representative of the Buyer, any other public body or person employed by or on behalf of the Buyer, or any other public body. |
| Relevant Transfer | A transfer of employment to which the Employment Regulations applies. |

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| Replacement Services | Any services which are the same as or substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services after the expiry or Ending or partial Ending of the Call-Off Contract, whether those services are provided by the Buyer or a third party. |
| Replacement Supplier | Any third-party service provider of Replacement Services appointed by the Buyer (or where the Buyer is providing replacement Services for its own account, the Buyer). |
| Security Management Plan | The Supplier's security management plan developed by the Supplier in accordance with clause 16.1. |
| Services | The services ordered by the Buyer as set out in the Order Form. |
| Service Data | Data that is owned or managed by the Buyer and used for the G-Cloud Services, including backup data. |
| Service Definition(s) | The definition of the Supplier's G-Cloud Services provided as part of their Application that includes, but isn't limited to, those items listed in Section 2 (Services Offered) of the Framework Agreement. |
| Service Description | The description of the Supplier service offering as published on the Digital Marketplace. |
| Service Personal Data | The Personal Data supplied by a Buyer to the Supplier in the course of the use of the G-Cloud Services for purposes of or in connection with this Call-Off Contract. |
| Spend Controls | The approval process used by a central government Buyer if it needs to spend money on certain digital or technology services, see https://www.gov.uk/service-manual/agile-delivery/spend-controls-checkif-you-need-approval-to-spend-money-on-a-service |
| Start Date | The start date of this Call-Off Contract as set out in the Order Form. |
| Subcontract | Any contract or agreement or proposed agreement between the Supplier and a Subcontractor in which the Subcontractor agrees to provide to the Supplier the G-Cloud Services or any part thereof or facilities or goods and services necessary for the provision of the G-Cloud Services or any part thereof. |
| Subcontractor | Any third party engaged by the Supplier under a Subcontract (permitted under the Framework Agreement and the Call-Off Contract) and its servants or agents in connection with the provision of G-Cloud Services. |
| Sub processor | Any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract. |

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| Supplier | The person, firm or company identified in the Order Form. |
| Supplier Representative | The representative appointed by the Supplier from time to time in relation to the Call-Off Contract. |
| Supplier Staff | All persons employed by the Supplier together with the Supplier's servants, agents, suppliers and Subcontractors used in the performance of its obligations under this Call-Off Contract. |
| Supplier Terms | The relevant G-Cloud Service terms and conditions as set out in the Terms and Conditions document supplied as part of the Supplier's Application. |
| Term | The term of this Call-Off Contract as set out in the Order Form. |
| Variation | This has the meaning given to it in clause 32 (Variation process). |
| Working Days | Any day other than a Saturday, Sunday or public holiday in England and Wales. |
| Year | A contract year. |

Schedule 7 - GDPR Information

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

Annex 1 - Processing Personal Data

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

- 1.1 The contact details of the Buyer's Data Protection Officer are: **[Insert Contact details]**
- 1.2 The contact details of the Supplier's Data Protection Officer are: **[Insert Contact details]**
- 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.

| Description | Details |
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| <p>Identity of Controller for each Category of Personal Data</p> | <p>The Buyer is Controller and the Supplier is Processor</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"> • <i>[Insert the scope of Personal Data for which the purposes and means of the Processing by the Supplier is determined by the Buyer]</i> <p>The Supplier is Controller and the Buyer is Processor</p> <p><i>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Buyer is the Processor in accordance with paragraph 2 to paragraph 15 of the following Personal Data:</i></p> <ul style="list-style-type: none"> • <i>[Insert the scope of Personal Data which the purposes and means of the Processing by the Buyer is determined by the Supplier]</i> <p>The Parties are Joint Controllers</p> <p><i>The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <ul style="list-style-type: none"> • <i>[Insert the scope of Personal Data which the purposes and means of the Processing is determined by the both Parties together]</i> <p>The Parties are Independent Controllers of Personal Data</p> |
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| | <p><i>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <ul style="list-style-type: none"> • <i>Business contact details of Supplier Personnel for which the Supplier is the Controller,</i> • <i>Business contact details of any directors, officers, employees, agents, consultants and contractors of Buyer (excluding the Supplier Personnel) engaged in the performance of the Buyer's duties under the Contract) for which the Buyer is the Controller,</i> • <i>[Insert the scope of other Personal Data provided by one Party who is Controller to the other Party who will separately determine the nature and purposes of its Processing the Personal Data on receipt e.g. where (1) the Supplier has professional or regulatory obligations in respect of Personal Data received, (2) a standardised service is such that the Buyer cannot dictate the way in which Personal Data is processed by the Supplier, or (3) where the Supplier comes to the transaction with Personal Data for which it is already Controller for use by the Buyer]</i> |
| Duration of the Processing | <i>[Clearly set out the duration of the Processing including dates]</i> |
| Nature and purposes of the Processing | <p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p> |
| Type of Personal Data | <i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i> |
| Categories of Data Subject | <i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i> |

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| <p>Plan for return and destruction of the data once the Processing is complete</p> <p>UNLESS requirement under Union or Member State law to preserve that type of data</p> | <p><i>[Describe how long the data will be retained for, how it be returned or destroyed]</i></p> |
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Annex 2 - Joint Controller Agreement – Not used 1. Joint Controller Status and Allocation of Responsibilities

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of paragraphs 2-15 of Framework Agreement Schedule 4

(Where one Party is Controller and the other Party is Processor) and paragraphs 17-27 of Framework Agreement Schedule 4 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the [Supplier/Buyer]:

- (a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;
- (b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
- (c) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;
- (d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
- (e) shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Supplier's/Buyer's] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

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

2. Undertakings of Both Parties

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

- (a) report to the other Party every [x] months on:
 - (i) the volume of Data Subject Request (or purported Data Subject Requests) from Data Subjects (or third parties on their behalf);

- (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
- (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
- (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,

that it has received in relation to the subject matter of the Contract during that period;

- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1(a)(i) to (v);
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- (d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex.
- (e) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
- (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
- (g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
 - (i) are aware of and comply with their 's duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information
 - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;

- (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- (h) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (i) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and
- (i) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.

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

3. Data Protection Breach

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

- (a) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation; (b) all reasonable assistance, including:
 - (i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
 - (ii) co-operation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;
 - (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or

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

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

- (a) the nature of the Personal Data Breach;
- (b) the nature of Personal Data affected;
- (c) the categories and number of Data Subjects concerned;
- (d) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
- (e) measures taken or proposed to be taken to address the Personal Data Breach; and
- (f) describe the likely consequences of the Personal Data Breach.

4. Audit

4.1 The Supplier shall permit:

- (a) the Buyer, or a third-party auditor acting under the Buyer's direction, to conduct, at the Buyer's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or
- (b) the Buyer, or a third-party auditor acting under the Buyer's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

4.2 The Buyer may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Clause 4.1 in lieu of conducting such an audit, assessment or inspection. **5. Impact Assessments**

5.1 The Parties shall:

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

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

6. ICO Guidance

The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

7. Liabilities for Data Protection Breach

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

- (a) if in the view of the Information Commissioner, the Buyer is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Buyer, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Buyer, then the Buyer shall be responsible for the payment of such Financial Penalties. In this case, the Buyer will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Supplier shall provide to the Buyer and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;
- (b) if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or
- (c) if no view as to responsibility is expressed by the Information Commissioner, then the Buyer and the Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 34 of the Core Terms (*Resolving disputes*).

7.2 If either the Buyer or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("Court") by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses

arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.

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

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

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

9. Termination

If the Supplier is in material Default under any of its obligations under this Annex 2 (*Joint Controller Agreement*), the Buyer shall be entitled to terminate the Contract by issuing a Termination Notice to the Supplier in accordance with Clause 18.5 (*Ending the contract*).

10. Sub-Processing

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

- (a) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
- (b) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

11. Data Retention

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

