



Crown Commercial Service

G-Cloud 10 Call-Off Contract

This Call-Off Contract for the G-Cloud 10 Framework Agreement (RM1557.10) includes:

Part A - Order Form	2
Schedule 1 - Services	8
Schedule 2 - Call-Off Contract charges	17
Part B - Terms and conditions	18
Schedule 3 - Collaboration agreement	38
Schedule 4 - Alternative clauses	38
Schedule 5 - Guarantee	38
Schedule 6 - Glossary and interpretations	38
Schedule 7 - Processing, Personal Data and Data Subjects	48

Part A - Order Form

Digital Marketplace service ID number:	983599319167184
Call-Off Contract reference:	Project_749
Call-Off Contract title:	Healthy Start Prepaid Cards Private Beta
Call-Off Contract description:	A Private Beta trial for up to 1000 cards for the Healthy Start Digitisation project.
Start date:	28/06/2019
Expiry date:	31 May 2020
Call-Off Contract value:	£12,765.22
Charging method:	Invoice BACS
Purchase order number:	To follow

This Order Form is issued under the G-Cloud 10 Framework Agreement (RM1557.10).

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

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

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

From: the Buyer	Department of Health and Social Care Buyer's main address: Quarry House Leeds LS2 7UE
To: the Supplier	Allpay Limited Supplier's address: Whitestone Business Park Whitestone Hereford HR1 3SE

	Company number: 02933191
Together: the 'Parties'	

Principle contact details

For the Buyer:	Title: Information redacted in line with Section 40 of the FOIA Name: Information redacted in line with Section 40 of the FOIA Email: Information redacted in line with Section 40 of the FOIA Phone: Information redacted in line with Section 40 of the FOIA
For the Supplier:	Title: Information redacted in line with Section 40 of the FOIA Name: Information redacted in line with Section 40 of the FOIA Email: Information redacted in line with Section 40 of the FOIA Phone: Information redacted in line with Section 40 of the FOIA

Call-Off Contract term

Start date:	This Call-Off Contract Starts on 28/06/2019 and is valid until 31 May 2020.
Ending (termination):	The notice period needed for Ending the Call-Off Contract is at least 60 Working Days from the date of written notice for disputed sums or at least 30 days from the date of written notice for Ending without cause.
Extension period:	This Call-Off Contract can be extended by the Buyer for two period(s) of six months each, by giving the Supplier 2 months 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 Services used by the Buyer may vary during this Call-Off Contract.

G-Cloud Lot:	This Call-Off Contract is for the provision of Services under: Lot 2 - Cloud software																						
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 Schedule 1 - Services																						
Additional services:	N/A																						
Location:	The Services will be delivered to Department of Health and Social Care Buyer's main address: Quarry House Leeds LS2 7UE																						
Quality standards:	The quality standards required for this Call-Off Contract are; <ul style="list-style-type: none"> • ISO9001 • ISO27001 																						
Technical standards:	The technical standards required for this Call-Off Contract are; <ul style="list-style-type: none"> • Cyber Essentials + 																						
Service level agreement:	<p>The service level and availability criteria required for this Call-Off Contract are;</p> <table border="1"> <thead> <tr> <th>Severity</th> <th>Resolution Time</th> <th>Definition</th> </tr> </thead> <tbody> <tr> <td>Resolution time for Severity 1 errors</td> <td>< 2 hours</td> <td>Defined as 'major impact' with central site system or critical component failure, business or service function completely unavailable or major Council/Cardholder impact</td> </tr> <tr> <td>Resolution time for Severity 2 errors</td> <td><8 hours</td> <td>'Severe impact' with preventable business or service function problem with minimal cardholder impact</td> </tr> <tr> <td>Resolution time for Severity 3 errors</td> <td>< 72 hours</td> <td>Minimal impact with minimal impact to any Council application with no cardholder impact</td> </tr> </tbody> </table> <table border="1"> <thead> <tr> <th>Description</th> <th>Minimum service levels</th> </tr> </thead> <tbody> <tr> <td>Calls answered within 20 Seconds</td> <td>80%</td> </tr> <tr> <td>Total Calls Answered</td> <td>90%</td> </tr> <tr> <td>Emails responded to within 24 hours</td> <td>90%</td> </tr> <tr> <td>Calls/Emails resolved First Time</td> <td>85%</td> </tr> </tbody> </table>	Severity	Resolution Time	Definition	Resolution time for Severity 1 errors	< 2 hours	Defined as 'major impact' with central site system or critical component failure, business or service function completely unavailable or major Council/Cardholder impact	Resolution time for Severity 2 errors	<8 hours	'Severe impact' with preventable business or service function problem with minimal cardholder impact	Resolution time for Severity 3 errors	< 72 hours	Minimal impact with minimal impact to any Council application with no cardholder impact	Description	Minimum service levels	Calls answered within 20 Seconds	80%	Total Calls Answered	90%	Emails responded to within 24 hours	90%	Calls/Emails resolved First Time	85%
Severity	Resolution Time	Definition																					
Resolution time for Severity 1 errors	< 2 hours	Defined as 'major impact' with central site system or critical component failure, business or service function completely unavailable or major Council/Cardholder impact																					
Resolution time for Severity 2 errors	<8 hours	'Severe impact' with preventable business or service function problem with minimal cardholder impact																					
Resolution time for Severity 3 errors	< 72 hours	Minimal impact with minimal impact to any Council application with no cardholder impact																					
Description	Minimum service levels																						
Calls answered within 20 Seconds	80%																						
Total Calls Answered	90%																						
Emails responded to within 24 hours	90%																						
Calls/Emails resolved First Time	85%																						
Onboarding:	The onboarding plan for this Call-Off Contract is to be provided by the supplier within 14 working day of the contract signature.																						

Offboarding:	The offboarding plan for this Call-Off Contract is to be provided by the Supplier within 30 days of contract signature.
Collaboration agreement:	Not Applicable
Limit on Parties' liability:	<p>The annual total liability of either Party for all Property defaults will not exceed £100,000.</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 of 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 20 consecutive days.
Audit:	<p>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.</p> <ul style="list-style-type: none"> ● The supplier's records and accounts will be kept for 7 years after the date of the ending or expiry of the Call Off Contract. ● Subject to confidentiality obligations, the supplier will make reasonable endeavours to provide audit information without delay.
Buyer's responsibilities:	<p>The Buyer is responsible for:</p> <ul style="list-style-type: none"> ● Providing a contact to act as a 'Super User' responsible for the supporting the onboarding of the programme as well as the daily operational support of the programme. ● Providing a named contact who would be responsible for compliance and finance issues and who can be contacted as and when required.

	<ul style="list-style-type: none"> • Carrying out relevant KYC checking of cardholders and provide the detail required to register a cardholder. • Managing the loading and monitoring of card balances. • Providing resource to support the exit of the programme.
Buyer's equipment:	Not applicable

Supplier's information

Subcontractors or partners:	<p>The following is a list of the Supplier's Subcontractors or Partners:</p> <p>Carta World Wide – Processor Compliance assist - PEPs and Sanctions Screening Clear Bank – Segregated Bank accounts. Allpay cards – Card production.</p>
------------------------------------	---

Call-Off Contract charges and payment

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

Payment method:	The payment method for this Call-Off Contract is by BACS on receipt of a valid invoice.
Payment profile:	The payment profile for this Call-Off Contract is monthly in arrears.
Invoice details:	The Supplier will issue electronic invoices monthly in arrears. The Buyer will pay the Supplier within 30 days of receipt of a valid invoice.
Who and where to send invoices to:	Invoices will be sent to mb-paymentqueries@dhsc.gov.uk .
Invoice information required – for example purchase order, project reference:	All invoices must include a valid Purchase Order number.
Invoice frequency:	Invoice will be sent to the Buyer on a monthly basis.
Call-Off Contract value:	The total value of this Call-Off Contract is £12,765.22 .
Call-Off Contract charges:	<p>The breakdown of the Charges is attached below:</p>  <p>Healthy Start Private Beta Pricing Schedule</p>

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: To be agreed at contract implementation.
Guarantee:	Not relevant
Warranties, representations:	Not relevant
Supplemental requirements in addition to the Call-Off terms:	Not relevant
Alternative clauses:	Not relevant
Buyer specific amendments to/refinements of the Call-Off Contract terms:	Not relevant
Public Services Network (PSN):	Not relevant
Personal Data and Data Subjects:	Will Schedule 7 – Processing, Personal Data and Data Subjects be used? Yes

1. Formation of contract

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

2. Background to the agreement

- (A) The Supplier is a provider of G-Cloud Services and agreed to provide the Services under the terms of Framework Agreement number RM1557.10.
- (B) The Buyer provided an Order Form for Services to the Supplier.

Signed:	Allpay Limited (Supplier)	Department of Health and Social Care (Buyer)
Name:	Information redacted in line with Section 40 of the FOIA	Information redacted in line with Section 40 of the FOIA
Job Title:		
Signature:		
Date:	28.06.19	28.06.19

Schedule 1 - Services

Ref No.	Requirement	Requirement Description	Must have	Nice to Have
1. Card Use				
MH1	Card holders from 16 years of age	The lower age limit of a card user is 16 years of age. It must be possible to give the card to a 16/17 year old with no restrictions.	X	
MH2	Merchant Category Code restrictions	The cards must be capable of being restricted to a list of merchant category codes provided by DHSC.	X	
MH3	Updating Merchant Category restrictions	The card provider or DHSC/NHSBSA must be able to make merchant category restriction changes in the portal without additional cost .	X	
MH4	Contactless and Chip and PIN use	The cards must work at POS machines in both Contactless and Chip/PIN mode.	X	
MH5	Use with all POS terminals	The cards must be capable of being used with all POS terminals capable of processing VISA and MASTERCARD in the UK, including handheld/ mobile phone payment mechanisms operated by some smaller retailers.	X	
MH6	Cannot spend more than available on the card	The card must only allow transactions within the balance available on the card	X	

MH7	In-person transactions only	The card use is for in-person transactions only.	X	
MH8	Sterling only transactions	The card must be restricted to transactions in sterling and transactions must take place in the UK.	X	
MH9	No funds can be added by the card holder or third party	Funds can only be added to the card by DHSC. The card holder and any other person must be prevented from adding funds.	X	
MH10	No payments to other accounts, direct debits or standing orders	The card holder must not be able to transfer funds from the card to another account, set up direct debits or standing orders.	X	
MH11	No cash withdrawals	The card holder must not be able to make cash withdrawals	X	
NH1	Refunds on transactions allowed	The card holder must be able to get a refund for poor quality goods or erroneous transactions without cost when uncontested by the retailer. The funds should be refunded to the card.		X
NH2	Transactions following loss/theft of card and refunding genuine losses	In the case of card loss or theft properly reported, any losses deemed genuine after investigation must be refunded in full to the card without charge to the card holder.		X
MH12	Terms and Conditions changes agreed before actioned.	The Terms and Conditions of card use will be explained within the application process and applicant must accept them before their application is accepted. The Terms and Conditions required for compliance with the Card Provider scheme must be agreed with the DHSC and not changed without consultation. Terms and conditions must be written in plain English so that card holders can easily understand them.	X	
MH13	Costs for balance checks	Costs for obtaining a balance should not be passed on to the card holder (i.e. a text for a balance update).	X	
2. Card Provision				

MH14	Provide new prepaid cards for successful applicants.	<p>DHSC/NHSBSA will provide the Card Provider with the details necessary to send a new card to a beneficiary.</p> <p>The card provider must send the card to the new user within 3 business days of receiving the new card account request.</p>	X	
MH15	Adding funds to a new card for existing beneficiaries	<p>Benefits will be added to cards on a four-weekly basis. Cards will be topped up on day 1 and day 15 of the four-week cycle.</p> <p>It must be set out clearly when the card is sent out, on what day the beneficiary will start to have benefits available on their card.</p> <p>It should be explained that paper vouchers will not be received from this point.</p>	X	
MH16	Adding funds to a new card for new beneficiaries	<p>Benefits will be added to cards on a four-weekly basis. Cards will be topped up on day 1 and day 15 of the four-week cycle.</p> <p>It must be set out clearly when the card is sent out, on what day the beneficiary will start to have benefits available on their card.</p> <p>There should also be an explanation that payment will be backdated to the day the request was made to join the scheme, so the first monthly payment is likely to be larger than subsequent ones.</p>	X	
MH17	Simple card activation	<p>The card holder must be able to activate a new card on any day of the week, simply and without cost to themselves.</p> <p>Activating a card must be able to be done without requiring strong English language skills or digital literacy.</p> <p>A method must be available for those without access to a computer or smart phone.</p>	X	

MH18	DHSC must be able to add information to the new/replacement card literature	The literature included with new and replacement cards must include the scheme terms and conditions.	X	
MH19	Know Your Customer Check	The Card Provider must send cards to beneficiaries without requiring any paper-based proof of identity, on the grounds that beneficiaries have already proven their identity in order to claim the relevant benefit	X	
3. Replacing Cards and Updating Details				
MH20	Notify lost card	Card holders must have the capability to report a lost or stolen card and block use.	X	
MH21	Replacing lost/stolen cards	The card provider must, when receiving a report of a lost/stolen card, block the card and notify DHSC/NHSBSA that a replacement is required. A replacement card must be sent out within 3 business days.	X	
MH22	Cardholder ability to update details	The cardholder must NOT be able to update their own name, address and contact details. DHSC/NHSBSA will manage updating of details.	X	
4. Central Account Funding and Financial Control				
MH23	Funds held in a central account	A central account must be in place to provide payments to card holders and to receive refunds from retailers and any funds within this account must be legally owned by DHSC. DHSC Finance must be able to view the current level of funds available in the central account through a management portal.	X	
MH24	4 weekly payment cycle funding	Each card will have funds transferred to it every 4 weeks. Any balance remaining from the previous load of funds should remain.	X	

MH25	Returning money to DHSC Bank Account	DHSC must be able to request the return of funds from <ul style="list-style-type: none"> • Individual cards to the Central Account • The Central Account to the DHSC Bank Account 	X	
MH26	Monthly reconciliation	On the last day of the month, DHSC require access to reports which include <ul style="list-style-type: none"> • The balance in the Central Account at the end of the previous month • The balance of unspent money on card accounts at the end of the previous month • Funds added and returned funds from the central account during the month • Funds transferred to card accounts during the month • Money spent from cards during the month or return of funds received from cards • The balance in the Central Account • The balance in card accounts 	X	
5. Management Portal				
MH27	Block/Unblock cards	DHSC must be able to block spend from a card and unblock.	X	
NH3	Refund money from a card to the central account	It must be possible for DHSC to refund some or all of the money from a card account to the central account.		X
NH4	Refund money from the central account to DHSC	It must be possible for DHSC to refund some or all of the money from the central account to DHSC.		X
MH28	Order a new or replacement card	It must be possible DHSC/NHSBSA to order and set up a new card account and order a card to be printed and delivered.	X	
NH5	Make a payment to a card	It must be possible for DHSC/NHSBSA make a payment to a card within 2 hours providing funds exist in the central account.		X

MH29	View the Central Account transactions and current level of funds	It must be possible for DHSC/NHSBSA to view the central account fund levels and transactions	X	
MH30	View individual card transactions and movement of funds between the card and the central account	It must be possible for DHSC/NHSBSA to view all transactions on an individual card.	X	
MH31	Download transactions into CSV files	It must be possible for DHSC/NHSBSA to download the result of queries on the central account or card accounts to a CSV or other spreadsheet file.	X	
MH32	View fraud alerts on card accounts	It must be possible DHSC/NHSBSA to identify and view card accounts where fraud alerts have been triggered (see fraud section).	X	
MH33	Identify card misuse	It must be possible for DHSC/NHSBSA to identify and view card accounts by the following criteria <ul style="list-style-type: none"> • No transactions within a specified period • Funds above a specified level • Transactions exceeding a specified value • Attempted spend at a blocked MCC code 	X	
6. Customer Service by Card Provider				
MH34	Lost/Stolen card blocks	A help desk is required to allow a card to be reported lost or stolen.	X	
MH35	Card related customer service needs	The card provider shall be the first point of contact for cardholders in relation to all card related customer service needs including <ul style="list-style-type: none"> • card activation, • PIN changes, and • card, account or transaction queries • blocking and replacing of lost/stolen cards. 	X	
7. Automation and API's				

MH36	New card requests	It must be possible for DHSC to order new cards for up to 200 beneficiaries. A response is required so that the service knows that the card request has been successful or, if not, the reason for failure.	X	
MH37	New card status	It must be possible to check the status of the new card request after the initial card request (in order that the service support function can check whether there has been a problem fulfilling the new card request).	X	
MH38	Card Payments	It must be possible for DHSC to initiate the transfer of a payment from the central account to the card account providing sufficient funds are available in the central account. The interval between sending the card payment request and funds being available on a card must be within 2 hours. A response is required so that the service knows that the card payment has been successful or, if not, the reason for failure.	X	
MH39	Card balance	DHSC must be able to request the balance from cards with authorised and pending transactions included.	X	
MH40	Card holder details update	It must be possible for DHSC to update the card holder name, address and contact details. A response is required so that the service knows that the card account details have been updated or, if not, the reason for failure.	X	
MH41	Card replacement request	It must be possible for DHSC to request for a replacement card to be issued. A response is required so that the service knows that the card replacement request has been actioned or, if not, the reason for failure.	X	
8. Anti-Fraud Requirements				

MH42	Fraud prevention	DHSC require the Card Provider to help prevent fraud and misuse of the card	X	
MH43	Portal access	Card provider must prevent unauthorised access to the portal.	X	
MH44	Spend in unauthorised shops	Card provider must prevent and report on any attempted transactions in restricted merchants	X	
9. Service Availability				
MH45	Reporting	The card provider should provide a publicly accessible status page / dashboard	X	
MH46	Service availability	<p>The portal should be available 24/7, 364 days of the year.</p> <p>The helpdesk should be available during office hours, ideally 8-6, to be agreed on contract award.</p> <p>There should be 99.5 % service availability for the web portal and helpdesk.</p> <p>Card holders must be able to use their cards 24/7 365 days of the year</p>	X	
MH47	Incident management	Incident management processes must be in place including a phone number and escalation point.	X	
NH6	Unplanned / planned Outage communication.	<p>DHSC/NHSBSA will require 6 weeks' notice for planned outages and a communications plan for relaying the information to beneficiaries.</p> <p>An escalation process should be in place for handling and informing DHSC of any unplanned outage.</p>		X
MH48	Reporting	DHSC and NHSBSA must have access to reports on card activity on the portal.	X	

NH7	Accessibility	As a minimum, the self-service portal must meet Level AA of the Web Content Accessibility Guidelines (WCAG) 2.0: http://www.w3.org/WAI/intro/wcag.php		X
MH49	Service capacity	The service should be able to support 200 beneficiaries on the scheme.	X	
10. Relationship Management				
MH50	Contract management	The card provider shall provide a named account manager who will be responsible for ensuring delivery against the SLAs in the contract.	X	
MH51	Finance	Invoices shall be submitted monthly in arrears unless otherwise agreed between DHSC and the card provider.	X	
11. Management Information				
MH52	To provide card related management reports to DHSC/NHSBSA	On a four-weekly basis DHSC/NHSBSA require access to reports on; <ul style="list-style-type: none"> • Number of cards requested • Number of cards issued • Number of cards reported lost / stolen 	X	
MH53	To provide transaction related management reports to DHSC/NHSBSA	On a four-weekly basis DHSC/BSA require reports on; <ul style="list-style-type: none"> • Funds transferred to card holders or refunds made by card holders • Funds transferred to and from Central Account • Number of transactions (by card holders) 	X	
MH54	To provide customer service related management reports	On a four-weekly basis DHSC/NHSBSA will require reports on; <ul style="list-style-type: none"> • Number of support calls received (split by reason code) • Average speed to answer for support calls 	X	
12. Data Security and Retention				

MH55	Data security standards	The card supplier must adhere to Payment Card Industry Data Security Standards (PCI-DSS)	X	
MH56	Data breaches	Any data breaches must be notified to DHSC within 24 hours of the breach being discovered. For a serious breach, DHSC will make a report to the ICO within 72 hours as per their guidance	X	
MH57	Security policies	The card provider must provide details of their security policy and business continuity plan which applies to the service	X	
MH58	GDPR	The card supplier and systems must be GDPR compliant.	X	
MH59	Portal security	The card provider must ensure that portal security is sufficient to protect beneficiaries and administrators from hackers and in particular to ensure that all software platforms are promptly patched when updates become available.	X	
13. Exit Management				
MH60	At end of contract - transition to another provider or scheme	The card provider must support the emerging plans for transition of the service to the public Beta, including making information available about beneficiaries and systems.	X	

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 are detailed under **Part A – Call of Contract Charges and Payment**

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)
 - 5.2 to 5.3 (Force majeure)
 - 5.6 (Continuing rights)

- 5.7 to 5.9 (Change of control)
- 5.10 (Fraud)
- 5.11 (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)
- 8.49 to 8.51 (Publicity and branding)
- 8.42 to 8.48 (Conflicts of interest and ethical walls)
- 8.52 to 8.54 (Equality and diversity)
- 8.66 to 8.67 (Severability)
- 8.68 to 8.82 (Managing disputes)
- 8.83 to 8.91 (Confidentiality)
- 8.92 to 8.93 (Waiver and cumulative remedies)
- 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 Framework Agreement incorporated clauses will be referred to as 'incorporated Framework clause XX', where 'XX' is the Framework Agreement clause number.

2.4 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 8.83 to 8.91. 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 Call-Off 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/government-security-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 Accreditation of Information Systems at <https://www.cpni.gov.uk/protection-sensitive-information-and-assets>

- the National Cyber Security Centre's (NCSC) information risk management guidance, available at <https://www.ncsc.gov.uk/guidance/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-of-practice/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-security-principles>

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 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 8.92 to 8.93 (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 The Parties will comply with the Data Protection Legislation and agree that the Buyer is the Controller and the Supplier is the Processor. The only Processing the Supplier is authorised to do is listed at Schedule 7 unless Law requires otherwise (in which case the Supplier will promptly notify the Buyer of any additional Processing if permitted by Law).
- 33.2 The Supplier will assist the Buyer with the preparation of any Data Protection Impact Assessment required by the Data Protection Legislation before commencing any Processing (including provision of detailed information and assessments in relation to Processing operations, risks and measures) and must notify the Buyer immediately if it considers that the Buyer's instructions infringe the Data Protection Legislation.
- 33.3 The Supplier must have in place Protective Measures, details of which shall be provided to the Buyer on request, to guard against a Data Loss Event, which take into account the nature of the data, the harm that might result, the state of technology and the cost of implementing the measures.
- 33.4 The Supplier will ensure that the Supplier Staff only process Personal Data in accordance with this Call-Off Contract and take all reasonable steps to ensure the reliability and integrity of Supplier staff with access to Personal Data, including by ensuring they:
- i) are aware of and comply with the Supplier's obligations under this Clause;
 - ii) are subject to appropriate confidentiality undertakings with the Supplier
 - iii) are informed of the confidential nature of the Personal Data and don't publish, disclose or divulge it to any third party unless directed by the Buyer or in accordance with this Call-Off Contract
 - iv) are given training in the use, protection and handling of Personal Data.

- 33.5 The Supplier will not transfer Personal Data outside of the European Union unless the prior written consent of the Buyer has been obtained, which shall be dependent on such a transfer satisfying relevant Data Protection Legislation requirements.
- 33.6 The Supplier will delete or return Buyer's Personal Data (including copies) if requested in writing by the Buyer at the End or Expiry of this Call-Off Contract, unless required to retain the Personal Data by Law.
- 33.7 The Supplier will notify the Buyer without undue delay if it receives any communication from a third party relating to the Parties' obligations under the Data Protection Legislation, or it becomes aware of a Data Loss Event, and will provide the Buyer with full and ongoing assistance in relation to each Party's obligations under the Data Protection Legislation, and insofar as this is possible, in accordance with any timescales reasonably required by the Buyer
- 33.8 The Supplier will maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- i) the Buyer determines that the Processing is not occasional;
 - ii) the Buyer determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - iii) the Buyer determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 33.9 Before allowing any Sub-processor to Process any Personal Data related to this Call-Off Contract, the Supplier must:
- i. notify the Buyer in writing of the proposed Sub-processor(s) and obtain its written consent;
 - ii. ensure that it has entered into a written agreement with the Sub-processor(s) which gives effect to obligations set out in this Clause 33 such that they apply to the Sub-processor(s); and
 - iii. inform the Buyer of any additions to, or replacements of the notified Sub-processors and the Buyer shall either i) provide its written consent or ii) object.
- 33.10 The Buyer may at any time put forward a Variation request to amend this Call-Off Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Schedule 3 - Collaboration agreement

The Collaboration agreement is available at <https://www.gov.uk/guidance/g-cloud-templates-and-legal-documents>

Schedule 4 - Alternative clauses

The Alternative clauses are available at <https://www.gov.uk/guidance/g-cloud-templates-and-legal-documents>

Schedule 5 - Guarantee

The Guarantee is available at <https://www.gov.uk/guidance/g-cloud-templates-and-legal-documents>

Schedule 6 - Glossary and interpretations

In this Call-Off Contract the following expressions mean:

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

	excluding IPRs owned by that Party in Buyer software or Supplier software.
Buyer	The contracting authority ordering services as set out in the Order Form.
Buyer Data	All data supplied by the Buyer to the Supplier including Personal Data and Service Data that is owned and managed by the Buyer.
Buyer Personal Data	The personal data supplied by the Buyer to the Supplier for purposes of, or in connection with, this Call-Off Contract.
Buyer Representative	The representative appointed by the Buyer under this Call-Off Contract.
Buyer Software	Software owned by or licensed to the Buyer (other than under this Agreement), which is or will be used by the Supplier to provide the Services.
Call-Off Contract	This call-off contract entered into following the provisions of the Framework Agreement for the provision of Services made between the Buyer and the Supplier comprising the Order Form, the Call-Off terms and conditions, the Call-Off schedules and the Collaboration Agreement.
Charges	The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under this Call-Off Contract.
Collaboration Agreement	An agreement, substantially in the form set out at Schedule 3, between the Buyer and any combination of the Supplier and contractors, to ensure collaborative working in their delivery of the Buyer's Services and to ensure that the Buyer receives end-to-end services across its IT estate.
Commercially Sensitive Information	Information, which the Buyer has been notified about by the Supplier in writing before the Start Date with full details of why the Information is deemed to be commercially sensitive.
Confidential Information	Data, personal data and any information, which may include (but isn't limited to) any: <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 Data Protection Legislation.
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 <small>[SEP]</small>	Means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed
Data Protection Impact Assessment	An assessment by the Controller of the impact of the envisaged processing by the Processor under this Call-Off Contract on the protection of Personal Data.
Data Protection Legislation	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 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 Data Protection Legislation.
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>
Deliverable	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.
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

	<ul style="list-style-type: none"> ● 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 RM1557.10 together with the Framework Schedules.
Fraud	Any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.
Freedom of Information Act or FOIA	The Freedom of Information Act 2000 and any subordinate legislation made under the Act together with any guidance or codes of practice issued by the Information Commissioner or relevant Government department in relation to the legislation.
G-Cloud Services	The cloud services described in Framework Agreement Section 2 (Services Offered) as defined by the Service Definition, the Supplier Terms and any related Application documentation, which the Supplier must make available to CCS and Buyers and those services which are deliverable by the Supplier under the Collaboration Agreement.
GDPR	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.
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.

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.
Intellectual Property Rights or IPR	Intellectual Property Rights are: <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	For the purposes of the IR35 rules an intermediary can be: <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	A 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.
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 Data Protection Legislation.
Personal Data Breach	Takes the meaning given in the Data Protection Legislation.
Processing	Takes the meaning given in the Data Protection Legislation but, for the purposes of this Call-Off Contract, it will include both manual and automatic Processing. ‘Process’ and ‘processed’ will be interpreted accordingly.
Processor	Takes the meaning given in the Data Protection Legislation.
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.
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).
Services	The services ordered by the Buyer as set out in the Order Form.
Service Data	Data that is owned or managed by the Buyer and used for the G-Cloud Services, including backup data.
Service Definition(s)	The definition of the Supplier's G-Cloud Services provided as part of their Application that includes, but isn't limited to, those items listed in Section 2 (Services Offered) of the Framework Agreement.
Service Description	The description of the Supplier service offering as published on the Digital Marketplace.

Service Personal Data	The Personal Data supplied by a Buyer to the Supplier in the course of the use of the G-Cloud Services for purposes of or in connection with this Call-Off Contract.
Spend Controls	The approval process used by a central government Buyer if it needs to spend money on certain digital or technology services, see https://www.gov.uk/service-manual/agile-delivery/spend-controls-check-if-you-need-approval-to-spend-money-on-a-service
Start Date	The start date of this Call-Off Contract as set out in the Order Form.
Subcontract	Any contract or agreement or proposed agreement between the Supplier and a Subcontractor in which the Subcontractor agrees to provide to the Supplier the G-Cloud Services or any part thereof or facilities or goods and services necessary for the provision of the G-Cloud Services or any part thereof.
Subcontractor	Any third party engaged by the Supplier under a Subcontract (permitted under the Framework Agreement and the Call-Off Contract) and its servants or agents in connection with the provision of G-Cloud Services.
Subprocessor	Any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract.
Supplier 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 - Processing, Personal Data and Data Subjects

Subject matter of the processing:

^L_{SEP} Beneficiaries of DHSC's Help to Buy Healthy Food Scheme.

Duration of the processing:

^L_{SEP} 28 June 2019 – 31 May 2020

Nature and purposes of the Processing:

^L_{SEP} Beneficiary data i.e. Name, DOB and address will be provided to the supplier to enable distribution of pre-paid cards to the users of the scheme. The data shall not be used for any other purposes than stated in this order form.

Type of Personal Data:

^L_{SEP} Name, Address, DOB

Categories of Data Subject:

^L_{SEP} Members of the public

Plan for return or destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data:

^L_{SEP} [Describe how long the data will be retained for and how it will be returned or destroyed - TBC



GENERAL TERMS AND CONDITIONS

BACKGROUND

This document should be read in conjunction with Schedule 1 - Service Terms and Schedule 2 - Service Schedule. In the event of a conflict between documents, the following order will prevail: Schedule 2 – Service Schedule, General Terms & Conditions, Schedule 1 – Service Terms

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions

"Client" means organisation whose name and address is specified in Service Schedule and includes its successors and permitted assigns.

Client's Equipment: any equipment, systems, cabling or facilities provided by the Client and used directly or indirectly in the supply of the Services.

Customer: is a Customer of the Client and end user of the Services provided herein

Deliverables: all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

In-put Material: all Documents, information and materials provided by the Client relating to the Services, including computer programs, data, reports and specifications.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Pre-existing Materials: all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of this agreement, including computer programs, data, reports and specifications.

Services: the services to be provided by the Supplier under this agreement and the Service Schedule together with any other services which the Supplier provides or agrees to provide to the Client.

"Supplier" means the Supplier whose name and address is specified in the Service Schedule and includes its successors and assigns.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its

subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Client.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Clauses, Schedules and paragraph headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 A reference to **writing** or **written** includes fax and e-mail.

1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.12 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Supplier's obligations

2.1 The Supplier shall use reasonable endeavours to manage and provide the Services, to the Client, in accordance with this Agreement in all material respects.

2.2 The Supplier shall use reasonable endeavours to meet any performance dates specified herein but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.



3. Client's obligations

3.1 The Client shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as reasonably required by the Supplier;
- (c) provide, in a timely manner, such In-put Material and other information as the Supplier may reasonably require, and ensure that it is accurate in all material respects;
- (d) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Supplier's Equipment, the use of In-put Material and the use of the Client's Equipment in relation to the Supplier's Equipment, in all cases before the date on which the Services are to start;
- (e) adhere to the provisions and the principles outlined in the Anti-Money Laundering Regulations 2007 (as amended from time to time) or shall, where necessary, be registered for anti-money laundering purposes. In particular the client shall use its best endeavours to carry out KYC checks on each proposed Customer and make its best endeavours to ensure that only those persons in respect of whom such checks are completed satisfactorily are designated as being able to receive the Services as set out in this Agreement. In particular, the Supplier will require the Client, wherever possible and as far as it is reasonably practicable, to satisfy itself of the identity of each Customer and ensure all relevant records are securely retained for a minimum of 7 years and that the Client shall make such information available to the Supplier and/or any regulatory body upon request from time to time.
- (f) To use the Supplier as its exclusive provider of the Services for the duration of the Term.

3.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay.

3.3 The Client shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to the Supplier confirming such costs, charges and losses to the Client in writing.

3.4 The Client shall not, without the prior written consent of the

Supplier, at any time from the date of this agreement to the expiry of 6 months after the completion of the last date of supply of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

3.5 Any consent given by the Supplier in accordance with clause 3.4 shall be subject to the Client paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Client to that employee, consultant or subcontractor.

4. Change control

4.1 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Client of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to the Supplier's charges arising from the change;
- (c) the likely effect of the change on the Project Plan; and
- (d) any other impact of the change on this agreement.

4.2 If the Client wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services, the relevant Project Plan and any other relevant terms of this agreement to take account of the change and this agreement has been varied in accordance with clause 14.

4.3 Notwithstanding clause 4.2, the Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. The Supplier may, from time to time and subject to Client's prior written consent, which shall not be unreasonably withheld or delayed change the Services, provided that such changes do not materially affect the nature or quality of the Services and, where practicable, it will give the Client at least three months' notice of any change.

4.4 The Supplier may charge for the time it spends assessing a request for change from the Client on a time and materials basis in accordance with clause 5.

5. Charges and payment

5.1 The Client shall pay the amount specified in the Service Schedule for each Transaction processed by the Supplier (subject to condition 5.2)

5.2 On the first (1st) of April each Year of this Agreement, such Transaction Fees and other charges may be increased by the higher of 2% or the up-to-date percentage increase in the Retail Prices Index.



- 5.3 The Transaction Fee has been calculated on the Client anticipated volume of Transactions specified in the Service Schedule and all third party costs applicable, in each Year of this Agreement and having regard to Mastercard and Visa Interchange fees. Where the volume of Transactions in any Year of this Agreement changes or where Mastercard/Visa or other third party fees increase, the Supplier reserves the right to apply an associated increase in charge equivalent to the appropriate charging level for the actual volume of Transactions achieved or interchange or third party fees applicable, such charges to be applied retrospectively in the relevant Year of the Agreement where appropriate.
- 5.4 The Supplier will invoice the Client Monthly in arrears in respect of the Transaction Fees and other charges for the previous Month. Each such invoice shall show the number of Transactions processed by the Supplier during such Month and the Transaction Fees due to the Supplier together with such other charges (if any) payable under this Agreement.
- 5.5 Invoices shall be raised electronically and emailed to the Client for the period leading up to and including the final day of each Month. Should such date not be a Working Day, such invoice shall be raised on the next Working Day.
- (a) **Payment is due to the Supplier by variable Direct Debit, payable (following receipt by the Client of each invoice) on or about the fourteenth (14th) of each month by the Client and payment shall be made without deduction, set-off or counterclaim.**
- (b) **If for any reason the Client becomes indebted to the Supplier as a result of unpaid invoices, Charge Back Rights, or unpaid Direct Debits, and is unable to immediately repay that indebtedness, the Client authorises the Supplier to deduct an amount corresponding to such indebtedness from the Client's Principal Funds or from any payment due from the Supplier to the Client; or**
- (c) **The Supplier may charge the Client interest (both before and after any judgment) on the amount unpaid at the rate per annum specified in the Service Schedule from time to time (or such greater rate as shall from time to time be prescribed by statute) from the due date until payment in full is made.**
- 5.6 Interest accruing on monies held within the Trust Account(s) shall be payable to the Supplier.
- 5.7 Where any cheque tendered for payment by a Customer is returned unpaid, the Supplier shall be entitled to charge the Client the amount specified in the Service Schedule to cover banking and administration fees together with any other charges which are levied on the Supplier by its bank.
- 5.8 In addition to the Transaction fees, the Service Schedule will set out costs applicable in respect of the cost of dispatch of the initial batch of CPCs, Card Carriers, wallets and associated stationery, new and replacement cards, monthly maintenance fees, the cost of returning undeliverable CPCs, Card Carriers and wallets and any other such services agreed between the parties from time to time.

6. Intellectual property rights

- 6.1 As between the Client and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier. Subject to clause 6.2, the Supplier licenses all such rights to the Client free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Deliverables and the Services. If this agreement is terminated, this licence will automatically terminate.
- 6.2 The Client acknowledges that, where the Supplier does not own any of the Pre-existing Materials, the Client's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Client.

7. Confidentiality and the Supplier's property

- 7.1 The Client undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Client may obtain, except as permitted by clause 7.2.
- 7.2 The Client may disclose the Supplier's confidential information:
- (a) **to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 7; and**
- (b) **as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.**
- 7.3 The Client shall not use the Supplier's confidential information for any purpose other than to perform its obligations under this agreement.
- 7.4 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Client (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain the exclusive property of the Supplier, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

8. Limitation of liability

- 8.1 Nothing in this agreement limits or excludes the Supplier's liability for:



- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

8.2 Subject to clause 8.1, the Supplier shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of or damage to goodwill;
- (f) loss of use or corruption of software, data or information;
- (g) any indirect or consequential loss.

8.3 Subject to clause 8.1 and clause 8.2, the Supplier's total liability to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall not exceed the amount of Fees paid by the Client to the Supplier in the 12 months prior to the cause of action arising.

8.4 Save as expressly set out in this Agreement, the Supplier gives no warranties, guarantees or undertakings concerning its performance of the Services or any additional services and the Client hereby expressly agrees and acknowledges that the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

9. Data protection and other legislation

9.1 In performing their respective obligations under this Agreement each of the Supplier and the Client shall comply with the provisions of the Data Protection Act 1998 and all other applicable data protection legislation and regulations including any applicable Visa and Mastercard scheme rules and each shall indemnify the other in respect of all claims, losses, damages, liabilities, fines, penalties, costs and expenses arising from any breach by it of its obligations under this Condition 10.1. Each party warrants shall make best efforts to that it has obtained all necessary licences for the purposes of the Data Protection Act 1998 to enable it to perform its obligations under this Agreement.

9.2 Neither party shall unlawfully discriminate on grounds of any protected characteristic as defined in the Equality Act 2010 or any comparable statutory provision relating to discrimination in employment or service provision. Both Parties shall comply with all relevant codes of practice issued by the Commission for Equality and Human rights and so far as practicable operate an equal opportunities policy which complies with the practical guidance and recommendations contained in the said codes of practice.

9.3 Both parties shall adopt safe methods of work and comply with all other requirements of the Health and Safety at Work Act 1974 in order to protect the health and safety of its personnel and to the extent applicable the personnel of the Client and all other persons.

9.4 The Parties shall:

- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) comply with the other party's Ethics, Anti-bribery and Anti-corruption Policies as provided by the each party by the other from time to time;
- (d) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause (b), and will enforce them where appropriate;
- (e) ensure that all persons associated with the each party or other persons who are performing services in connection with this agreement comply with this clause 10.3; and

9.5 Breach of clause 9.4 shall be deemed a material breach.

10. Termination & Suspension

10.1 The notice period for this Agreement is as stipulated in the Service Schedule and applies to the whole agreement or any part of it or Service stipulated in the Service Schedule.

10.2 If the Client terminates this Contract by serving a shorter notice period than set out in the Service Schedule, then the Client agrees to pay to the Company a sum equal to the charges that would have been reasonably expected to be due to the Company if the correct notice period had been duly served.

10.3 Without affecting any other right or remedy available to it, either party may suspend or terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 60 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 60 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is



inconsistent with it having the intention or ability to give effect to the terms of this agreement;

- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a Supplier or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a Supplier) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a Supplier) [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a Supplier);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a Supplier) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (k) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (l) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.3(d) to clause 10.3(k) (inclusive);
- (m) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

10.4 For the purposes of clause 10.3(b), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit

which the terminating party would otherwise derive from:

- (a) a substantial portion of this agreement; or
- (b) any of the obligations set out in clauses 7, 9 and 10.

over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

11. Consequences of termination

11.1 On termination or expiry of this agreement:

- (a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Client shall, within a reasonable time, return all of the Supplier's Equipment, Pre-existing Materials and Deliverables. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping;
- (c) the following clauses shall continue in force: clause 6 (Intellectual property rights), clause 7 (Confidentiality and the Supplier's property), clause 8 (Limitation of liability), clause 22 (Notices), clause 24 (Dispute resolution), clause 25 (Governing law and jurisdiction), and the Services set out in Schedule 1 - Service Terms for as long as payments by the Customer continue to be made, in which case the Client shall continue to pay the Supplier its reasonable charges.

11.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

12. Force majeure

12.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence



or consent;

- (f) collapse of buildings, fire, explosion or accident; and
- (g) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- (h) interruption or failure of utility service.

12.2 Provided it has complied with clause 12.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

12.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

- 12.4 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
 - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

12.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 6 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 12 weeks' written notice to the Affected Party.

12.6 If the Force Majeure Event prevails for a continuous period of more than 6 months, either party may terminate this agreement by giving 7 days' written notice to all the other party. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

13. Variation

Subject to clause 4, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy

shall prevent or restrict the further exercise of that or any other right or remedy.

15. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

16. Severance

16.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

16.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

17. Entire agreement

17.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

17.3 Nothing in this clause shall limit or exclude any liability for fraud.

18. Conflict

In the event of a conflict between the General Terms & Conditions, Schedule 1 – Service Terms, Schedule 2 – Service Schedule, the following order will prevail: Schedule 2 – Service Schedule, General Terms & Conditions, Schedule 1 – Service Terms

19. Assignment and other dealings

19.1 This agreement is personal to the Client and the Client shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

19.2 The Supplier may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its



rights and obligations under this agreement, provided that the Supplier gives prior written notice to the Client.

20. No partnership or agency

- 20.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 20.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

21. Third party rights

No one other than a party to this agreement shall have any right to enforce any of its terms.

22. Notices

- 22.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a Supplier) or its principal place of business (in any other case); or
 - (b) sent by fax to its main fax number.
- 22.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
 - (c) if sent by fax, at 9.00 am on the next Business Day after transmission.
- 22.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

23. Counterparts

- 23.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 23.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by (a) fax or (b) e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted,

without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

- 23.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

24. Multi-tiered dispute resolution procedure

- 24.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Manager of the Supplier and Manager of Client shall attempt in good faith to resolve the Dispute;
 - (b) if the Manager of Supplier and Manager of Client are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Director of Supplier and Director of Client who shall attempt in good faith to resolve it; and
 - (c) if the Director of Supplier and Director of Client are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 28 days after the date of the ADR notice.

- 24.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute.

- 24.3 If the Dispute is not resolved within 42 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 42 days, or the mediation terminates before the expiration of the said period of 42 days, the Dispute shall be finally resolved by the courts of England and Wales OR arbitration proceedings.

25. Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.



26. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 - SERVICE TERMS

PART 1

BACKGROUND

This document should be read in conjunction with General Terms & Conditions and Schedule 2 - Service Schedule. In the event of a conflict between documents, the following order will prevail: Schedule 2 – Service Schedule, General Terms & Conditions, Schedule 1 – Service Terms

1. INTERPRETATION

In these Conditions:

"Account Bank(s)" means any UK clearing bank or other UK financial institution regulated by the Financial Services Authority (FSA), with whom a Trust Account is opened.

"Agreement" means the terms and conditions herein and the provisions contained within Schedule 2 - Service Schedule attached hereto.

"allpay Set" means allpay Limited stationary set, consisting of any combination of a CPC, Card Carrier and wallet.

"Allpay Distributed Software" is the Supplier's software platform which includes <http://www.allpayments.net> and <https://webconnect.allpay.net> as well as platforms and connections to the Network Providers and Branded Gateway.

"AML" and **"Anti-Money Laundering"** means practices and procedures pursuant to the AML Regulations

"AML Regulations" means the Money Laundering Regulations 2007, the FSA Money Laundering Sourcebook, the Proceeds of Crime Act 2002 and all other relevant UK and EU legislation in force pertaining to Anti-Money Laundering.

"APT" means Automated Payment Terminal(s) or such other equipment with comparable technical capability as the Network Provider(s) may choose to install in Payment Points.

"ATM" means Automated Teller Machine(s) or such other equipment with comparable technical capability as Account Banks may choose to install in locations of their choice.

"BACS" means the Bankers Automated Clearing System.

"BACS Cycle" means the BACS defined period of three Working Days, (Day 1 'Instruction' (which for the purposes of clarification means the day the Client makes a payment), Day 2 'Processing', Day 3 'Credit').

"BACS Service Level Agreement" shall have the meaning as set out in Schedule 1 (A)

"Bar Code" means the widely adopted symbology used to encode data in machine-readable format.

"Bar Code Reader" means a Data Capture Facility (DCF) capable of reading and capturing Bar Coded data.

"Branded Gateway" the Supplier's branded payment gateway, which can be tailored to the Client's brand.

"CPC" means a customer payment card made of plastic, on which is printed or embossed the primary account number, (the PAN) and other identifying information, the PAN (and other identifying information) being encoded magnetically on to a magnetic strip on the reverse of the card, or electronically to an embedded 'chip', (integrated circuit), on the front of the card, or both.

"Call Centre" means the Supplier's dedicated in-house service facility.

"Card Carrier" means the paper letter to which the CPC is attached.

"Cardholder Not Present" (CNP) means a payment made without the holder of the Credit Card or Debit Card being present.

"Card Issuer" means the UK clearing bank(s) or other UK financial institution(s) regulated by the FSA, which operates a Card Scheme.

"Card Scheme(s)" means the Card Scheme(s) specified in Schedule 2 - Service Schedule or as may otherwise be notified in Writing by the Supplier to the Client from time to time.

"Card Scheme Rules" means, in relation to a Card Scheme, the rules and operating regulations as defined by the Card Issuer.

"Charge Back Rights" means a Transaction returned unpaid to the authorising bank by the Card or Cheque Issuer.

"Client" means the organisation whose name and address is specified in Schedule 2 - Service Schedule and includes its successors and permitted assigns.

"Conditions" means the standard terms and conditions set out in this document and (unless the context otherwise requires) includes any Special Conditions specified in Schedule 2 - Service Schedule.

Customer: is a Customer of the Client and end user of the Services provided herein

"Credit Card and or Debit Card" means a credit card and or debit card issued by a Card Issuer to a Customer.

"Data" means, in relation to a Transaction, the date, the unique transaction ID, full location details and amount of the relevant Payment and the Client account to which such Payment relates.

"Default" means any breach by either party of its obligations under this Agreement or any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

"FSA" means the Financial Services Authority or any successor thereof.

"Internet Payment" means the Supplier websites at <http://www.allpay.net>, <http://www.allpayments.net> and <https://webconnect.allpay.net> and or such other websites as the Supplier may notify to the Client from time to time.

"KYC" means "know your Customer" investigations as required by the AML Regulations.

"MTV" means the Maximum Transaction Value specified in Schedule 2 - Service Schedule.

"Month", "Months" and "Monthly" mean calendar month.

"Nominated Account" means the account of the Client or such other account as the Client may nominate by notice in Writing to the Supplier from time to time.

"Payment" means an amount of money tendered by a Client to the Client, in cash, or by cheque, or by Credit or Debit Card, or by Direct Debit or any other legal means of disbursement, notified by the Supplier to the Client from time to time, and in the currency of the Territory.

"Payment Point" means any location in which an APT, kiosk or other payment facility is installed and operated for or on behalf of a Network Provider including, where applicable, a branch of the Client's office.

"Principal Funds" means the Payments received from the Customers into the Trust Account(s), excluding any interest accruing on the Trust Account(s).

"Services" means the Supplier is in business as a consolidator providing bill payment collection services from the Network Providers detailed in Schedule 2 - Service Schedule, via a variety of methods as set out in Schedule 2 - Service Schedule. All monies collected are consolidated and held in trust on behalf of its Clients before onward transmission to Clients in addition to processing and transmitting all associated data. The Supplier at all times acts on behalf its Clients in accordance with the following terms and conditions.

"Service Schedule" means the Service Schedule supplied by the Supplier to the Client and signed by both parties.

"Software" means the Supplier's Software programmes necessary for the proper operation of this Agreement as specified in Schedule 2 - Service Schedule or as may subsequently be provided by the Supplier to the Client.

"Special Conditions" means the Special Conditions specified in Schedule 2 - Service Schedule.

"Supplier" means the Supplier whose name and address is specified in Schedule 2- Service Schedule and includes its successors and assigns.

"Term" means the period (and date commencing) specified in Schedule 2 - Service Schedule, and shall continue thereafter subject to either party terminating this Agreement by serving twelve (12) Months' notice (or such other period as specified as a Special Condition in Schedule 2 - Service Schedule) in Writing on the other, subject to early termination in accordance with any Condition of this Agreement.

"Transaction" means the tendering of a Payment by a Customer.

"Trust Account(s)" means the Trust Account(s) from time to time operated by the Account Bank(s) in the name of the Supplier for receipt of Payments and retention of Principal Funds.

"Virtual Account" means the dedicated area within the Trust Account created to identify and control the movement of the Client's Principal Funds

"Working Day" means Monday to Friday with the exclusion of English and Scottish public and bank holidays.

"Writing" includes facsimile transmission and electronic mail.

"Year of this Agreement" means, in relation to each Service, the twelve (12) Month period commencing on the **Start Date** specified in S Schedule 2 - Service Schedule and each subsequent twelve (12) Month period.

The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Information Sharing

The Client shall provide the Supplier with the an estimate in writing of the number of Customers which it anticipates will be making Payments under such Service together with such other information as the Supplier may reasonably require to enable it to prepare and issue CPCs and to perform its obligations under this Agreement.

3. Remittance of Monies Paid and Data

3.1 The Supplier will arrange for Data or reporting, received through Data Capture Facilities, to be available for transmission, transmitted on the Working Day following the Customer completing the transaction.

3.2 Payments received by the Supplier direct shall be credited to the Client's account(s) within the Trust Account(s), by the Supplier, within the BACS Cycle;

3.3 A payment instruction for the value of Transactions paid per day, shall be made by the Supplier by way of direct bank transfer to the Nominated Account in accordance with the time frame stipulated in Schedule 2 - Service Schedule following receipt thereof (subsequent to the completed BACS Cycle) in cleared funds by the Supplier into the Trust Account(s).

3.4 All interest accruing in the Trust Account shall belong to the Supplier.

4. CUSTOMER PAYMENT CARDS

4.1 The purpose of CPCs is to provide each Customer with a unique reference number so that all Payments made by such Customer are correctly identified to the appropriate account within the Supplier's database.

4.2 Upon receipt of the information referred to in Clause 2 above, the Supplier shall prepare a CPC and Card Carrier for each Customer so notified. All subsequent CPCs requested either for new Customers or by way of replacement of CPCs already issued will be dispatched to the Client or the relevant Customer (as the Client may specify in Writing), by close of business on the next Working Day following receipt of such request.

4.3 If the Client wishes to use a CPC, Card Carrier, wallet or any other item which has been supplied by a third party, the Supplier reserves the right by notice in Writing to reject any such CPC, Card Carrier, wallet or other item which does not meet the following required specifications

CPCs: ISO7810, (thickness, corner radius, warpage and size).

ISO7811, (positioning of magnetic stripe and internal encoding and embossing guidelines).

Carriers: ISO9002 manufacturing standard - A4 100gsm (+/- 10%).

Wallets: outer plastic thickness of 350 microns and clear inner pocket plastic thickness of 150 microns.

4.4 Unless previously approved in Writing by the Supplier, the use of each CPC is strictly limited to the purpose expressly intended by this Agreement.

4.5 With effect from the Commencement Date, until the termination of this Agreement, the Client shall allow the Supplier to use the name and logo of the Client in the Supplier's, and where appropriate, the relevant Network Provider's promotional and marketing materials relating to the provision of the Services. The Client agrees that it will be guided by the Supplier as to the use of logos of the Network Providers on the CPCs and, if appropriate, the logos will be displayed with equal prominence if requested to do so by the Supplier.

5. SECURITY OF CASH

5.1 The Supplier shall maintain one or more Trust Accounts with the Account Bank(s), for the purpose of receiving Payments on behalf of, and for transmitting funds pursuant to Condition 3, to the Client.

5.2 A dedicated Virtual Account will be created within the Trust Account for the purpose of identifying the Client monies to be held by the Supplier from time to time.

5.3 The first such Virtual Account within the Trust Account(s) will be provided free of charge and any additional Virtual Account(s) requested by the Client will attract a Monthly maintenance fee as set out in Schedule 2 - Service Schedule. The Supplier hereby agrees and declares that the Principal Funds held in the Trust Account(s) in the name of the Client shall not at any time form part of the assets of the Supplier, cannot be offset against any indebtedness of the Supplier (save for indebtedness accruing from the Client) and the Supplier hereby declares that it will hold such Principal Funds on trust for the Client.

5.4 The Supplier will issue confirmation in Writing to the Client of each Virtual Account pursuant to Condition 5.3. Such confirmation will provide to the Client (inter alia):

5.4.1 the Client's individual account reference(s).

5.4.2 any other required details enabling the Client to identify the Principal Funds to which it is entitled.

5.5 The Supplier may from time to time open further Trust Account(s) in substitution for, or in addition to, the existing Trust Account(s) provided that on each occasion it shall comply with this agreement.

6. STATIONERY AND ART WORK

6.1 The Supplier will co-ordinate and assist the Client with the preparation and design of all stationery and CPCs but the cost of the printing and any associated art work must be agreed in Writing by and paid for by the Client. Such cost will be notified to the Client in Writing prior to production, and will be subject to alteration should the Client's requirements alter. The Client will be responsible for proofing the accuracy and content of the stationery and the artwork.

6.2 CPCs, Card Carriers, wallets and associated stationery will be held by the Supplier but will remain the property of the Client provided that such items held by the Supplier from time to time shall be at their risk and the Supplier shall label such items in order to identify them as the property of the Client.

6.3 The Supplier shall, on request, advise the Client of the number of CPCs, Card Carriers, wallets and associated stationery in storage

7. CARD SCHEMES

The Supplier may only accept the types of card issued under the Card Schemes: UK Maestro (incorporating Switch and Solo), MasterCard, VISA Credit, VISA Debit (incorporating Electron and Delta) or as particularised in Schedule 2 - Service Schedule. Each of the Supplier and the Client shall comply with the Card Scheme Rules.

8. CHARGE BACK RIGHTS

8.1 Card Issuers can refuse to settle any card Transaction, whether authorised or not, undertaken, or purported to be undertaken (CNP) by a Customer, or to require repayment of sums already paid to the Supplier in respect of such a card Transaction. For the avoidance of doubt, the rules, regulations and guidelines are published by the Account Bank(s) and Card Issuer(s) and regulated by the FSA in conjunction with government legislation.

8.2 If a Card Issuer exercises such Charge Back Right, the Supplier will immediately be entitled to recover from the Client the amount paid by the Supplier to the Client in respect of the relevant Transaction. In addition, upon prior notification from the Supplier, the Supplier may recover from the Client any other costs and expenses the Supplier may incur as a result of, or in connection with, such Charge Back. These costs will be included in the invoice for the relevant period. If the Client fails to make any payment under this Condition 8.2 on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to exercise its rights under Clauses 5 and 10 of our general terms

- 8.3 The Client shall endeavour to keep Charge Backs to an acceptable level and shall make best endeavours to reduce Charge Backs when notified to do so by the Supplier from time to time. Failure to reduce charge backs to an acceptable level may result in part or all of the Services being suspended or withdrawn.
- 9. PAYMENT CARD INDUSTRY SECURITY STANDARD**
- 9.1 The following provisions, within Clause 9, shall only apply to those organisations involved directly or indirectly in the transmission of personal financial data associated with debit and credit card transactions with the Supplier.
- 9.2 The provisions set forth in this section apply to a Client that either itself, or through a processor or other agent, stores, processes, handles or transmits cardholder data in any manner. For purposes of this section, the term “cardholder data” refers to the numbers assigned by the card issuer that identifies the cardholder’s account or other cardholder personal information.
- 9.3 The Client shall at all times comply with the Payment Card Industry Data Security Standard (“PCI DSS”) requirements for cardholder data, as they may be amended from time to time (collectively, the “PCI DSS Requirements”). Copies of current PCI DSS Requirements documentation are available on the Payment Card Industry Security Standards Council (PCI SSC) website at www.pcissc.com.
- 9.4 The Client will provide to the Supplier from time to time evidence to support that it complies with PCI DSS requirements.
- 9.5 The Client acknowledges and agrees that cardholder data may only be used for assisting in completing a card transaction, for fraud control services, for loyalty programs, or as required by applicable law.
- 9.6 In the event of a breach or intrusion of or otherwise unauthorised access to cardholder data stored at or for the Client, the Client shall immediately notify the Supplier, in the manner required in the PCI DSS Requirements, and provide the acquiring financial institution and their respective designees access to the Client’s facilities and all pertinent records to conduct a review of the Client’s compliance with the PCI DSS Requirements. The Client shall fully cooperate with any reviews of their facilities and records provided for in this paragraph.
- 9.7 The Client shall maintain appropriate business continuity procedures and systems to ensure security of cardholder data in the event of a disruption, disaster or failure of the Supplier’s or the Client’s primary data systems.
- 9.8 The Client and its successors and assignees shall comply with the PCI DSS Requirements after termination of this Agreement.
- 10 ALLPAY HOSTED SOFTWARE**
- 10.1 The Supplier shall give access to, (and where appropriate, supply and install), and as mutually agreed, provide training in, the use of the Software as specified in Schedule 2 - Service Schedule.
- 10.2 The Supplier hereby grants to the Client a non-exclusive, non-transferable licence to use the Software for the purposes of this Agreement for the Term. The Client shall not permit any third party to have possession of, access to, copy or use the Software, nor use the Software on behalf of or for the benefit of any third party (in any way whatsoever) without the Supplier’s prior consent in Writing.
- 10.3 For the avoidance of doubt, access rights to the Software are the domain of the Supplier. It is a pre-requisite of the Client’s access to the Software that no other person may share the Client’s user name and password other than the Client’s employees who need to do so for the purposes of their employment. The Client is responsible for all use of information accessed through the Software by the Client or anyone else using the Client’s name and password, whether or not with the Client’s permission, and or preventing unauthorised use of the Client’s user name and password. If the Client believes that there has been any breach of security such as the disclosure, theft or unauthorised use of its user name and password, or of any payment or other information, the Client must notify the Supplier immediately in Writing. Access to the Software and the Client’s user name and password may be terminated or suspended by the Supplier in its absolute discretion at any time after the Supplier has become entitled under this Agreement to terminate or suspend the Service(s).
- 10.4 The Client shall be responsible for maintaining up to date version of the internet browser to assure full functionality of the Software
- 10.5 Except as otherwise agreed under the Client’s provision of services to the Client Partners, the Client is not permitted to and hereby undertakes not to:
- 10.5.1 copy the Software.
- 10.5.2 transfer, distribute, rent, loan, lease, sub-licence or otherwise deal in the Software
- 10.5.3 alter, adapt, merge, modify or translate the whole or any part of the Software in any way whatsoever for any purpose, including, without limitation, for error correction.
- 10.5.4 permit the whole or any part of the Software to be combined with or become incorporated in any other programs.
- 10.5.5 engineer, disassemble or decompile the Software.
- 10.5.6 remove, change or obscure any product identification or notices of proprietary rights and restrictions on or in the Software.
- 10.6 The Software and the copyrights and other intellectual property rights of whatever nature in the Software are and shall remain the property of the Supplier.
- 10.7 The Client undertakes that it will not interfere or attempt to interfere with the proper working of the Software.

- 11. ALLPAY DISTRIBUTED SOFTWARE**
- 11.1 The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software is licensed, not sold.
- 11.2 The Software is licensed as follows:
- 11.2.1 The Supplier grants the Client the right to install and use copies of the Software on the Client's computer running a validly licensed copy of the operating system for which the Software was designed.
- 11.2.2 The Client may make copies of the Software as may be necessary for backup and archival purposes.
- 11.3 The Software's rights and limitations are as follows:
- 11.3.1 The Client may not remove or alter any copyright notices on any and all copies of the Software.
- 11.3.2 The Client may not distribute registered copies of the Software to third parties.
- 11.3.3 The Client may not reverse engineer, decompile or disassemble the Software, except and only to the extent that such activity is expressly permitted by applicable law and notwithstanding this limitation.
- 11.3.4 The Client may not create derivative works based upon the Software.
- 11.3.5 The Client may not rent, lease or lend the Software.
- 11.3.6 The Supplier may provide the Client with support services related to the Software ('Support Services'). Any supplemental software code provided to the Client as part of the Support Services shall be considered part of the Software and subject to the terms and conditions set out below.
- 11.4 The Client must comply with all applicable laws regarding use of the Software.
- 11.5 Without prejudice to any other rights, the Supplier may terminate use of the Software if the Client fails to comply with these Terms and Conditions. In the event that the Agreement is terminated for whatever reason, the Client must destroy all copies of the Software in the Client's possession.
- 11.6 All title, including but not limited to copyrights, in and to the Supplier Software and any copies thereof are owned by the Supplier or its suppliers. All title and intellectual property rights in and to the content which may be accessed through use of the Supplier Software is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. These Terms and Conditions grant you no rights to use such content. All rights not expressly granted are reserved by the Supplier.
- 11.7 Without prejudice to Condition 10.4.1 and 104.2 herein the following provisions apply to Conditions 8 of the General Terms and Conditions above. The Supplier expressly disclaims any warranty for the Software. The Software is provided 'As Is' without any express or implied warranty of any kind, including but not limited to any warranties of merchantability, non-infringement, or fitness of a particular purpose. The Supplier does not warrant or assume responsibility for the accuracy or completeness of any information, text, graphics, links or other items contained within the Software. The Supplier makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb, or other such computer program. The Supplier further expressly disclaims any warranty or representation to Authorised Users or to any third party.
- 11.8 In no event shall the Supplier be liable for any damages (including, without limitation, lost profits, business interruption, or lost information) rising out of 'Authorised Users' use of or inability to use the Software, even if the Supplier has been advised of the possibility of such damages. In no event will the Supplier be liable for loss of data or for indirect, special, incidental, consequential (including lost profit), or other damages based in Agreement, tort or otherwise. The Supplier shall have no liability with respect to the content of the Software or any part thereof, including but not limited to errors or omissions contained therein, libel, infringements of rights of publicity, privacy, trademark rights, business interruption, personal injury, loss of privacy, moral rights or the disclosure of confidential information, subject to Condition 12 of the this Schedule.
- 12 ALLPAY DISTRIBUTED SOFTWARE LIMITED WARRANTY**
- 12.1 The Supplier warrants for a period of ninety (90) days from date of delivery of the Distributed Software to the Client (the Licensee) that:
- 12.1.1 the media on which the Software is furnished to be free of defects and workmanship under normal usage and service and,
- 12.1.2 will conform in all material respect to the printed specifications for the Software.
- 12.2 This limited warranty covers only the Licensee of the Software. The Client's sole remedy for any failure of the Software is limited to the repair or replacement of the Software at the Supplier's discretion. The Supplier's liability is limited to the amount paid for the Software. The Supplier shall not be liable for indirect, special, consequential or liquidated damages or penalties, including claims for lost revenues, profits or business opportunities, even if The Supplier had or should have had any knowledge, actual or constructive, of the possibility of such damages.
- 12.3 The Supplier does not warrant that the Software is error free or that Client will be able to use the Software without problems or interruptions. The Supplier does not warrant that the Software and any equipment on which the Software is used will be free from vulnerability to attack on the network, including viruses and other techniques for attacking networks.

13 SUPPORT

- 13.1 For the duration of the license of the Software under Condition 10.2 the Supplier shall provide technical support for the Software between the hours of 8:30 am and 5:30pm on Working Days and the Supplier shall use its reasonable endeavours to respond as soon as practicable after receipt of a request. The technical support shall comprise telephone help desk support and, if a problem cannot be resolved by telephone support, by a site visit at the Client's cost, where necessary.
- 13.2 Technical support shall not include the diagnosis and rectification of any fault resulting from:
- 13.2.1 the improper use, operation or neglect of the Software or the equipment on which it operates
 - 13.2.2 the unauthorised modification of the Software or its merger (in whole or in part) with any other software
 - 13.2.3 use of the Software on equipment other than that approved by the Supplier
 - 13.2.4 the failure by the Client to implement recommendations in respect of, or solutions to, faults previously advised by the Supplier
 - 13.2.5 any repair, adjustment, alteration or modification of the Software by any person other than the Supplier without Supplier's prior consent in Writing.
 - 13.2.6 use of the Software on unsupported or obsolete internet browsers
 - 13.2.7 the use of the software for a purpose for which it was not designed

The Supplier shall, upon request by the Client, provide technical support notwithstanding that the fault results from circumstances described in Conditions 13.2.2 and 13.2.5. The Supplier shall, in such circumstances, be entitled to levy reasonable additional charges (at its then current rates), provided they are notified and agreed in advance of being incurred. Such additional charges shall be levied by the Supplier Monthly in arrears and shall be payable by the Client (together with value added tax thereon) within fourteen (14) days of receipt thereof. Without prejudice to the foregoing, the Supplier shall be entitled to levy reasonable additional charges (as aforesaid) if technical support is provided in circumstances where any reasonably skilled and competent data processing operator would have judged the Client's request to be unnecessary.

SCHEDULE 1 - SERVICE TERMS

PART 2

FOR THE PROVISION OF DIRECT DEBIT SERVICES ONLY

BACKGROUND

- A. This document should be read in conjunction with the Schedule 2 - Service Schedule and the General Terms and Conditions. In the event of a conflict between documents, the following order will prevail: Schedule 2 – Service Schedule, General Terms and Conditions, Schedule 1 – Service Terms
- B. In addition to, and without prejudice to the terms and conditions of this entire agreement, the following terms apply to the provision of Direct Debit Services only.
- C. The Supplier will act as the Service User for the collection of Direct Debit payments in respect of payments due to the Client and the Client will act as an agent of the Supplier for the purpose of fulfilling its responsibilities to the Payer under the Direct Debit Service User scheme.

1. INTERPRETATION OF CONDITIONS IN PART 2

In these Conditions:

"ADDACS" means the Automated Direct Debit Amendment and Cancellation Service.

"APACS" means the Association for Payment Clearing Services.

"Advance Notice" means the notice period of (normally) ten (10) Working Days plus postal time, two (2) Working Days, given to the Payer in respect of any Direct Debit Instruction (DDI), whether new or by way of an amendment, specifying their rights and safeguards.

"Agreement" means all of the Terms and Conditions set out herein and any supporting documents.

"AUDDIS" means the Automated Direct Debit Instruction Service

"Confirmation Letter" means the initial Advance Notice letter sent to the Payer, confirming the DDI details and which includes the Direct Debit Guarantee.

"CHAPS" means the Clearing House Automated Payment System.

"DD" means a Direct Debit.

"DDI" means the Direct Debit Instruction.

"Direct Debit Guarantee" means the guarantee offered by Paying Banks to Payers in respect of the Direct Debit scheme specifying their rights and safeguards.

"Indemnity Claim" means a repayment claim made by the Paying Bank in respect of a disputed Direct Debit.

"Lodgement" means the process of the Paying Bank accepting the DDI, and "Lodge(d)" shall be construed accordingly.

"Paperless DD" means a DD instruction taken by the Service User or its agent, from a Payer, in person or over the telephone.

"Payer" means the bank or building society Customer making payments by Direct Debit.

"Paying Bank" means the bank or building society at which the Payer's account is held and which will be debited by the Direct Debit in favour of the Originator.

"Scripting Prompts" means the questions asked of a Customer to obtain (and communicate), relevant information (in accordance with BACS legislation), to facilitate a Paperless DDI.

"Service User" means a Supplier that has been admitted to the Direct Debit scheme, is registered at APACS and is authorised to collect payments by means of Direct Debits.

"SUN" means Service User Number which is included in all DD communication formats.

"Transaction Fee" means the charge levied by the Supplier in the normal course of its business, for collecting DD payments on behalf of the Client.

"Unpaid Direct Debit" means a failed Direct Debit that is returned uncollected from the Paying Bank.

2. INITIAL ISSUE (PAPERLESS AND MANDATED DDIs)

- 2.1. The Client may accept a Payer's account details either over the telephone or in person, in strict accordance with Scripting Prompts, to allow completion of a Paperless DDI, (a Paperless DD).
- 2.2. The Supplier may provide paper Direct Debit Instructions to the Client, when requested, to allow a Payer to complete a written DDI
- 2.3. All DDI details shall be communicated to the Supplier, using the Software, within forty-eight (48) hours of receipt thereof by the Client, in order that the Supplier can issue Confirmation Letters to the Payer on the following Working Day.
- 2.4. All Paper DDIs must be returned to the Supplier, (as the Service User), for safekeeping. Upon request, the original Paper DDI must be provided by the Supplier to the Paying Bank, within five (5) Working Days.
- 2.5. The Client should retain a copy of all Paper DDIs returned to the Supplier.
- 2.6. On receipt of a DDI from the Client, the Supplier will process the details overnight and Lodge the DDI with the Paying Bank via AUDDIS.
- 2.7. The Supplier will issue Confirmation Letters for all new DDIs.
- 2.8. The Supplier will issue Advance Notice letters for all DDI amendments.
- 2.9. The Supplier will use the Software to notify the Client, of DDIs rejected by BACS, (using the error codes shown in the user guide, issued by the Supplier to the Client).

2.10. The Supplier will use the Software to advise the Client of all DDI cancellations notified to it via ADDACS.

2.11. Confirmation Letters and Advance Notice letters which have been posted in good faith by the Supplier, but returned to the Supplier as undeliverable (for whatever reason), will be re-directed to the client with a covering letter explaining the reason for non-delivery, and charged for at the rate specified in Schedule 2 - Service Schedule.

3. PAYMENT INSTRUCTION

The Supplier will issue Payment instructions to BACS two (2) days prior to the DDI payment date.

4. DIRECT DEBIT RULES

The rules of the Direct Debit scheme for Direct Debit origination include, but are not limited to, the following, which the Client agrees to conform to at all times:

- 4.1. Ensure the Advance Notice period is adhered to for all DDI submissions, both new and by way of amendment.
- 4.2. If the Payer requests a Direct Debit Instruction be cancelled, both the Supplier and the Client, whose primary responsibility is to the Payer, must comply immediately. In instances where the Payer makes direct contact with the Supplier, their wishes will be complied with and the Client informed. In cases where the Payer disputes the amount to be debited or has other queries relating to their account, they will be advised to contact the Client direct.
- 4.3. Under the terms of the Direct Debit Guarantee, if the Payer claims the Supplier, or the Client on the Supplier's behalf, has made an error processing a DD Payment, the Paying Bank is duty bound to immediately refund to the Payer, the value of that Payment, and will raise an Indemnity Claim against the Supplier, The Supplier is obliged to settle the claim within fourteen (14) days and will reclaim the money from the Client. Any disagreement as to the validity of the claim must be pursued by the Client.
- 4.4. No counterclaim is permissible by the Supplier under Condition 4.3 above. The Client, acting as the Supplier's agent, retains the right to take action directly against the Payer, and in order to do so, should ensure proper archived records of account are retained to facilitate a clear audit trail.

SCHEDULE 1 (A)

BACS SERVICE LEVEL AGREEMENT

“**Input day**” means the working day in which the Supplier sends the BACS instruction to the BACS sponsor beginning the BACS cycle.

“**Daily Download File**” means the file sent to the Client containing information in respect of the Transaction.

The purpose of this BACS Service Level Agreement is to set out the basis upon which the Supplier provides a BACS service to the Client.

Client Obligations

(1) The Client will advise the Supplier of BACS “Processing Dates” at least 12 days in advance of such date that the first transaction should occur.

Contingency Service

(2) Should Supplier’s systems be disrupted for any reason, the Supplier will endeavour to provide the Client with as full a service as possible.

(3) The Supplier will advise the Client should its systems be disrupted to such an extent that there is likely to be an adverse effect to the service provided to the Client.

(4) Should the Client experience problems in contacting the Supplier, communications should be redirected to the Supplier’s Client Care Team at Fortis et Fides, Whitestone Business Park, Whitestone, Hereford, HR1 3SE. Telephone: 0844 225 5729.

Data Delivery

(5) The Client will provide the Supplier with details of Payer’s bank accounts, (namely bank name, address, sorting code, account number and account name) and ensure that the Supplier is advised of any changes to these details

(6) The Supplier will arrange for a Confirmation Letter to the Payer and Daily File Download to be delivered to the Client, at least twelve working days prior to the Bacs processing date “**Advance Notice.**”

Data Verification

(7) The Client will check the Daily Download File on the day of receipt and ensure that the Processing Date, and the Payer’s bank details are correct.

(8) The Client will check the Daily Download Files to ensure that the number of transactions equate to the number of the Client’s Payers;

(9) The client will inform the Supplier of any errors identified on Daily Download Files no later than 4 days prior to the first payment being taken.

Cancellation of Payments

(10) The Payer will arrange the cancellation of payments by contacting their BACS sponsor, the Client or the Supplier.

(11) If it is necessary to withdraw the whole BACS file, the Client will contact the Supplier before 3pm, on the day before Input Day.

BACS Input Report

(12) This report provides details of the payments that have been sent electronically to the BACS service on behalf of the Client. The Client must collect their Daily Downloads the day after the instruction has been set up.

(13) The Supplier will check the BACS Input Report and notify the Client of any rejected records.

(14) The Client is responsible for dealing with any rejected or adjusted records identified in the Daily Download Files provided by the Supplier.