



# Crown Commercial Service

## G-Cloud 12 Call-Off Contract

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

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## Part A: Order Form

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

<b>Digital Marketplace service ID number</b>	554118357423516
<b>Call-Off Contract reference</b>	#1468
<b>Call-Off Contract title</b>	Lateral Flow Device Test Reader
<b>Call-Off Contract description</b>	Contract for a device reader to allow citizens to test themselves using LFDs and report results to the Buyer without professional assistance with either the swabbing or the test analysis.
<b>Start date</b>	3 <sup>rd</sup> June 2021
<b>Expiry date</b>	2nd September 2021
<b>Call-Off Contract value</b>	The Maximum Call-Off Contract value shall be £425,642 excluding VAT (" <b>Maximum Call-Off Contract Value</b> ")
<b>Charging method</b>	BACS – transactional billing with MI reporting as evidence
<b>Purchase order number</b>	To be confirmed once contract signed

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

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

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

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

<b>From the Buyer</b>	<b>Department for Health and Social Care</b>  39 Victoria Street  Westminster  London  SW1H 0EU
<b>To the Supplier</b>	<b>Sensyne Health PLC</b>  Schrödinger Building  Heatley Road  Oxford Science Park  Oxford  England  OX4 4GE  Company number: 11425451  03300 581 845
<b>Together the 'Parties'</b>	

## Principal contact details

### For the Buyer:

Title: Test Digital and Technology Director

Name: XXXXXXXXXX

Email: [REDACTED]

Phone:

**For the Supplier:**

Title: Chief Operating Officer

Name: [REDACTED]

Email: [REDACTED]

Phone: [REDACTED]

**Call-Off Contract term**

<b>Start date</b>	This Call-Off Contract Starts on <b>3rd June 2021</b> and is valid for <b>3 months</b>
<b>Ending (termination)</b>	<p>The notice period from the Supplier needed for Ending the Call-Off Contract is at least <b>30</b> Working Days from the date of written notice for undisputed sums (as per clause 18.6).</p> <p>The notice period for the Buyer is a maximum of <b>7</b> days from the date of written notice for Ending without cause (as per clause 18.1).</p>
<b>Extension period</b>	<p>This Call-off Contract can be extended by the Buyer for <b>3</b> period(s) of 1 month each, or 1 period of 3 months, by giving the Supplier <b>2 weeks</b> written notice before its expiry. The extension periods are subject to clauses 1.3 and 1.4 in Part B below.</p> <p>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.</p>

## Buyer contractual details

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

<b>G-Cloud lot</b>	<p>This Call-Off Contract is for the provision of Services under:</p> <ul style="list-style-type: none"><li>• Lot 2: Cloud software</li></ul>
<b>G-Cloud services required</b>	<p>The Services to be provided by the Supplier under the above Lot are listed in Framework Section 2 and outlined below:</p> <ul style="list-style-type: none"><li>• <b>Service desk support</b></li><li>• <b>Running the machine learning service</b></li></ul> <p>The Supplier shall provide the services as detailed in Order Form Schedule 2.</p>
<b>Additional Services</b>	<p>The Supplier shall also provide the following:</p> <p><b>Additional documentation to be provided to the Buyer for post-derogation:</b></p> <ul style="list-style-type: none"><li>• <b>Monthly MHRA reports</b></li><li>• <b>Algorithm development and management</b></li></ul>
<b>Location</b>	<p>The Services will be delivered remotely and/or with the possibility of on-site delivery at the following location, subject to governmental direction on physical onsite presence:</p> <p>39 Victoria Street</p> <p>Westminster</p> <p>London</p> <p>SW1H 0EU</p> <p>Please note: In line with governmental instructions regarding social distancing, the Parties should continuously monitor the requirement for in-person presence.</p>

<b>Quality standards</b>	<p>The quality standards required for this Call-Off Contract are as follows:</p> <ul style="list-style-type: none"> <li>- the Supplier must achieve, and continue to hold, the MHRA derogation for all In-Scope Test Kits for the Call-Off Contract Term and must maintain compliance with any conditions attached to the same (including maintenance of the ISO27000 standard);</li> <li>- the Supplier shall diligently pursue full CA marking from the appropriate body prior to the expiry of the MHRA derogation for each In-Scope Test Kit.</li> </ul> <p>Further quality standards are set out in Order Form Schedule 1.</p>
<b>Technical standards:</b>	<p>The technical standards used as a requirement for this Call-Off Contract are:</p> <ul style="list-style-type: none"> <li>- the API must comply with the Buyer's (or its arm's length bodies') specification, as set out in Appendix 1 to Order Form Schedule 1.</li> </ul> <p>Further technical standards are set out in Order Form Schedule 1.</p>
<b>Service level agreement:</b>	<p>The Supplier shall comply with the service level and availability criteria set out in Appendix 3 to Order Form Schedule 1.</p>
<b>Onboarding</b>	<p>Integration Testing and E2E testing has already been completed in conjunction with NHSD teams. The Supplier has also provided performance and load testing reports showing compliance to specified API performance targets, and has also conducted a third party penetration test that has reported no security risks on its API. These activities were covered under the proof of concept agreement entered into between the Parties dated 9 November 2020, as varied.</p> <p>As such the only requirement to complete onboarding of the Supplier's Services is for NHSD to make a configuration</p>

	<p>change to the GOV.UK LFD Self-Report Front-End web application code that will enable selected user cohorts to access the AI read functionality and thus for images captured to flow to the Supplier AI API service. The user cohorts enabled for this functionality will be specified in a “whitelist” configuration file. The specific cohorts chosen for “live service” for the “launch” will be determined by NHSD product management in conjunction with NHS T&amp;T use case teams and are anticipated to include:</p> <ul style="list-style-type: none"> <li>I [REDACTED]</li> <li>I [REDACTED]</li> <li>I [REDACTED]</li> <li>I [REDACTED]</li> <li>I [REDACTED]</li> <li>I [REDACTED]</li> </ul> <p>Before the whitelist change can be enabled, a Buyer Change Advisory Board meeting (“<b>CAB</b>”) will be held to approve the change by wider Buyer and NHSD stakeholders. In order for the CAB to be held a signed Data Processing Agreement (DPA) will need to be in place between the Buyer and the Supplier.</p>
<b>Offboarding</b>	<p>The offboarding plan for this Call-Off Contract is:</p> <p>On termination or expiry of this Call-Off Contract (whichever occurs first), the Supplier shall:</p> <ul style="list-style-type: none"> <li>- turn off the outbound API calls from the ‘Results Service’ located on the gov.uk web portal;</li> <li>- block all incoming call-back URL to the ‘Results Service’ API;</li> <li>- comply with the applicable provisions relating to termination, including those set out in the separate Data Processing Agreement between the parties dated on or about the date of this Call-Off Contract.</li> </ul>
<b>Collaboration agreement</b>	NA

<b>Limit on Parties' liability</b>	<p>The annual total liability of either Party for all Property defaults will not exceed £5,000,000.</p> <p>The annual total liability of the Supplier for Buyer Data Defaults will be governed by the terms of the Data Processing Agreement entered into by the Supplier and the Buyer dated on or about the date of this Call-Off Contract ("DPA"). For the avoidance of doubt, this liability cap shall be in addition to the Supplier's liability for other defaults as set out in this Order Form.</p> <p>The annual total liability of the Supplier for all other Defaults will not exceed 125% of the Charges paid or payable by the Buyer to the Supplier during the Call-Off Contract Term.</p> <p>The annual total liability of the Buyer for all other obligations or liabilities other than the Charges will not exceed 100% of the Charges paid or payable by the Buyer to the Supplier during the Call-Off Contract Term.</p> <p>For the Buyer's liability in relation to clause 18.3, (Unavoidable Loss), the parties agree for the purposes of this Order Form, no Unavoidable Loss is specified, and the Buyer has no liability pursuant to the indemnity at clause 18.3.</p>
<b>Insurance</b>	<p>The insurance(s) required will be:</p> <ul style="list-style-type: none"> <li>• a minimum insurance period of 6 years following the expiration or Ending of this Call-Off Contract</li> <li>• property damage insurance with an aggregate minimum limit of indemnity of £5 million public and products liability insurance with a minimum aggregate limit of £5 million or any higher minimum limit required by Law</li> <li>• 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)</li> <li>• employers' liability insurance with a minimum limit of £5,000,000 or any higher minimum limit required by Law</li> </ul>
<b>Force majeure</b>	<p>For the avoidance of doubt, the COVID-19 pandemic shall not constitute a Force Majeure Event under the terms of this Call-Off Contract.</p>



	<p>A Party may End this Call-Off Contract if the Other Party is affected by a Force Majeure Event that lasts for more than 7 consecutive days.</p>
<b>Audit</b>	<p>The Buyer shall have the same audit rights as CCS under the Framework Agreement. Therefore Clauses 7.4 to 7.13 of the Framework Agreement shall be incorporated into this Call-Off Contract, with required amendments made to change the defined terms from 'CCS' to 'Buyer'.</p>
<b>Buyer's responsibilities</b>	<p>The Buyer is responsible for the following:</p> <ul style="list-style-type: none"> <li>- maintaining all necessary regulatory authorisations for In-Scope Self-Test Kits where the Buyer is the legal manufacturer;</li> <li>- compliance with the conditions and obligations that are the Buyer's responsibility, imposed by the MHRA as conditions to the Exceptional Use Authorisation dated 28 April 2021 (EUA) for MagnifEye;</li> <li>- timely provision of such reports and information as are reasonably requested by to the Supplier and which are reasonably required to enable Supplier to comply with its regulatory reporting requirements;</li> <li>- notification to Supplier of any complaint received in relation to compromised safety, quality of performance of the Services as soon as reasonably practicable of Buyer becoming aware of such complaint;</li> <li>- implementation of any necessary corrective and preventative actions mutually agreed between the Supplier and the Buyer in accordance with the Variation process, in relation to complaints referred to above;</li> <li>- prepare and maintain instructions for use (including the user journey) for end users;</li> <li>- updates to the gov.uk website hosting the algorithm and the provision of services to end users. Buyer will use reasonable endeavours to notify the Supplier of any material updates to the website, however all changes will be made in the Buyer's sole discretion;</li> </ul>

	<ul style="list-style-type: none"> <li>- sending encoded images and associated meta data, in the format set out in the API specification, to the Supplier;</li> <li>- providing callback URL to agreed API specification for the Supplier to call with the AI read result;</li> <li>- notifying the Supplier of new test kits entering the Buyer's supply chain, which will be incorporated into the definition of In-Scope Test Kit, with reasonable notice and subject to Paragraph 2 of Order Form Schedule 1;</li> <li>- subject to Paragraph 2 of Order Form Schedule 1, providing training images to the Supplier as per the recommended process for retraining as set out in Appendix 2 to Order Form Schedule 1 (the "<b>Retraining Protocol</b>") to facilitate the Supplier's retraining of the AI algorithm for the additional In-Scope Test Kits.</li> <li>- managing the whitelist according to the derogation by test type</li> </ul>
<b>Buyer's equipment</b>	Equipment will not be provided by the Buyer, with the assumption that the Supplier will have access to the correct Buyer platforms (API production and test environments), no hardware to be supplied by the Buyer unless specifically requested

## Supplier's information

<b>Subcontractors or partners</b>	<p>The following is a list of the Supplier's Subcontractors or Partners</p> <p>Microsoft Limited  Microsoft Ireland Operations LimitedCognizant Worldwide Limited</p>
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## Call-Off Contract charges and payment

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

<b>Payment method</b>	The payment method for this Call-Off Contract is <b>BACS</b>
<b>Payment profile</b>	<p>The payment profile for this Call-Off Contract is monthly in arrears.</p> <ul style="list-style-type: none"> <li>- Service provision of the AI LFD Reader is costed at 'price per test' with transactional billing to be used for the 'price per test' via MI reporting.</li> </ul> <p>For example:</p> <p>Billing period Jun 1 – Jun 30  -----  ████████████████████</p> <p>Consisting of:</p> <ul style="list-style-type: none"> <li>████████████████████</li> <li>████████████████████</li> <li>████████████████████</li> <li>████████</li> </ul> <ul style="list-style-type: none"> <li>- Fixed charges for the Service Desk paid in monthly arrears</li> <li>- All other Charges shall be paid in monthly arrears as and when required .</li> </ul>

<b>Invoice details</b>	<p>The Supplier will issue electronic invoices monthly. The Buyer will pay the Supplier within <b>30</b> days of receipt of a valid invoice. The Supplier must provide a valid invoice with a corresponding:</p>
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	<ul style="list-style-type: none"> <li>- valid purchase order number</li> <li>- valid invoicing recipients</li> <li>- valid test and trace contract reference</li> </ul>
<b>Who and where to send invoices to</b>	<p>Invoices will be sent to:</p> <p><b>[REDACTED]</b></p>
<b>Invoice information required</b>	<p>The Buyer shall issue a Purchase Order to the Supplier in respect of any Services to be supplied to the Buyer under this Call-Off Contract. The Supplier shall comply with the terms of such Purchase Order as a term of this Call-Off Contract. For the avoidance of doubt, any actions or work undertaken by the Supplier under this Call-Off Contract prior to the receipt of a Purchase Order covering the relevant Services shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Services covered by a valid Purchase Order.</p> <p>The Supplier must be in Receipt of a valid Purchase Order Number before submitting an invoice. All invoices should be sent, quoting that number to the address given on the Purchase Order. To avoid delay in payment it is important that the invoice is compliant and that it includes an item number (if applicable) and the details (name and telephone number) of the Buyer contact. Non-compliant invoices will be sent back to the Supplier, which may lead to a delay in payment.</p> <p>The invoice must reflect the line items in the purchase order</p>
<b>Invoice frequency</b>	<p>Invoice will be sent to the Buyer monthly in a consolidated invoice</p>
<b>Call-Off Contract value</b>	<p>Unless otherwise agreed by both parties in accordance with the Variation process, the Maximum Call-Off Contract value shall be £425,642 excluding VAT.</p>

<b>Call-Off Contract charges</b>	The breakdown of the Charges is set out in Order Form Schedule 2 (Call-Off Contract Charges. The Buyer shall not be responsible for any Charges accrued by the Supplier which are in excess of the Maximum Call-Off Contract Value.
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### Additional Buyer terms

<b>Performance of the Service and Deliverables</b>	<p>This Call-Off Contract shall include the scope of services and deliverables as set out in Order Form Schedule 1.</p> <p>All Personal Data processed as part of the Services will remain within the UK.</p> <p>The Supplier shall, subject to Paragraph 2 of Order Form Schedule 1, comply with reasonable requests by the Buyer to allow integration of the Services between the Parties.</p> <p>The Supplier may from time to time delegate performance of the Services to Sensyne Health Group Limited (being an Affiliate of the Supplier), provided that the Supplier shall at all times remain responsible for compliance by such Affiliate with the terms of this Call-Off Contract.</p>
<b>Guarantee</b>	Not required
<b>Warranties, representations</b>	In addition to the incorporated Framework Agreement clause 4.1, the Supplier shall comply with the warranties and representations set out in the section "Buyer specific amendments to/refinements of the Call-Off Contract terms".
<b>Supplemental requirements in addition to the Call-Off terms</b>	See Buyer specific amendments to/ refinements of the Call-Off Contract terms section below.

<b>Alternative clauses</b>	<p>These Alternative Clauses, which have been selected from Schedule 4, will apply:</p> <p>Not Applicable.</p>						
<b>Buyer specific amendments to/refinements of the Call-Off Contract terms</b>	<p>For the purposes of incorporation of Schedule 6 - Glossary and interpretations of the Call-Off terms, the following definitions shall be added (and where such terms are already defined, such definitions shall be replaced with the corresponding definitions below):</p> <table border="1" data-bbox="529 745 1310 2042"> <tr> <td data-bbox="529 745 791 1003"> <b>Affiliate</b> </td><td data-bbox="791 745 1310 1003"> <p>means, with respect to a person or entity, any person or entity that directly or indirectly controls, is controlled by or is under common control with such person or entity;</p> </td></tr> <tr> <td data-bbox="529 1003 791 1339"> <b>Buyer Team</b> </td><td data-bbox="791 1003 1310 1339"> <p>means any employee, consultant, agent, representative, adviser, and/or other third party working for or on behalf of the Buyer and/ or the Test and Trace Programme on matters relevant to this Call-Off Contract and the Services;</p> </td></tr> <tr> <td data-bbox="529 1339 791 2042"> <b>Central Government Body</b> </td><td data-bbox="791 1339 1310 2042"> <p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; and</li> <li>d) Executive Agency;</li> </ul> </td></tr> </table>	<b>Affiliate</b>	<p>means, with respect to a person or entity, any person or entity that directly or indirectly controls, is controlled by or is under common control with such person or entity;</p>	<b>Buyer Team</b>	<p>means any employee, consultant, agent, representative, adviser, and/or other third party working for or on behalf of the Buyer and/ or the Test and Trace Programme on matters relevant to this Call-Off Contract and the Services;</p>	<b>Central Government Body</b>	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; and</li> <li>d) Executive Agency;</li> </ul>
<b>Affiliate</b>	<p>means, with respect to a person or entity, any person or entity that directly or indirectly controls, is controlled by or is under common control with such person or entity;</p>						
<b>Buyer Team</b>	<p>means any employee, consultant, agent, representative, adviser, and/or other third party working for or on behalf of the Buyer and/ or the Test and Trace Programme on matters relevant to this Call-Off Contract and the Services;</p>						
<b>Central Government Body</b>	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; and</li> <li>d) Executive Agency;</li> </ul>						

	<b>Comparable Supply</b>	means the supply of deliverables to another buyer of the Supplier that are the same or similar to the Deliverables;
	<b>CSR Laws</b>	means Laws relating to corporate social responsibility issues (e.g. anti-bribery and corruption, health and safety, the environmental and sustainable development, equality and diversity), including but not limited to the Modern Slavery Act 2015, the Public Services (Social Value) Act 2012, the Public Contracts Regulations 2015 and Article 6 of the Energy Efficiency Directive 2012/27/EU, from time to time in force;
	<b>CSR Policies</b>	means the Buyer's policies, including, without limitation, anti-bribery and corruption, health and safety, the environmental and sustainable development, equality and diversity, and any similar policy notified to the Supplier by the Buyer from time to time, and " <b>CSR Policy</b> " shall mean any one of them;
	<b>Cyber Security Requirements</b>	means:  a) compliance with the DSP Toolkit or any replacement of the same notified to Supplier from time to time (subject to Paragraph 2 of Order Form Schedule 1);  b) compliance with Test and Trace security requirements as set out in Appendix 4 of Order Form Schedule 1 and  c) any other cyber security requirements relating to the Services notified to the Supplier by the Buyer from time to time;

	<b>Data Protection Legislation (DPL)</b>	means the European Data Protection Laws, UK Data Protection Laws and to the extent applicable data protection or privacy laws of any other country;
	<b>DSP Toolkit</b>	means the data security and protection toolkit, an online self-assessment tool that allows organisations to measure their performance against the National Data Guardian's 10 data security standards and supports key requirements of the GDPR, which can be accessed from <a href="https://www.dsptoolkit.nhs.uk/">https://www.dsptoolkit.nhs.uk/</a> , as may be amended or replaced by the Buyer from time to time;
	<b>European Data Protection Laws</b>	means the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council ("GDPR"); and laws implementing or supplementing the GDPR;
	<b>G-Cloud Services</b>	For the purpose of this Call-Off Contract, means the Services and Deliverables ordered by the Buyer as set out in the Order Form;
	<b>General Change in Law</b>	means a change in Law which comes into force after the Start date, where the change is of a general legislative nature and/or affects or relates to a Comparable Supply, and includes Laws arising out of or in connection with the United Kingdom's withdrawal from the European Union which substantially amend, replace or supersede any existing Law;



	<b>In-Scope Test Kits</b>	<p>means the lateral flow device test kits that the Supplier is required to support in the provision of the AI Reader API Service.</p> <p>At the Call-Off Contract Start Date, this includes but not exclusive to the following test kits:</p> <p>- Innova types A, B, C &amp; D;</p> <p>and the Supplier shall be required to support any further test kits as notified by the Buyer from time to time, subject to Paragraph 2 of Order Form Schedule 1.</p>
	<b>Law</b>	<p>means (from time to time in force) any applicable law, any applicable Act of Parliament, statute, by law, regulation, order, regulatory policy (including any requirement or notice of any regulatory body), guidance or industry code of practice, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, or enforceable community right within the meaning of Section 2 of the European Communities Act 1972, and any amended or new laws arising out of or in connection with the United Kingdom's withdrawal from the European Union (that is, ceases to be an EU Member State);</p>
	<b>Medical Device</b>	<p>means any Deliverable that falls under the definition of a medical device in accordance with guidance published by the Medicines and Healthcare Products Regulatory Agency;</p>

	<b>Buyer Specific IPR</b>	<p>means:</p> <ul style="list-style-type: none"> <li>- the specification of the APIs;</li> <li>- all reports and documentation produced by the Supplier for the Buyer (including documentation relating to data analysis and the user journey, but excluding the MHRA submission the Retraining Protocol and the review protocol for the ATS);</li> <li>- all data (including Personal Data and Buyer Data) which is collected as part of the Services;</li> <li>- the 'Instructions For Use' documentation;</li> <li>- the Front-end GOV.UK User Journey and image capture, submission and polling of results and technical design;</li> <li>- the look, feel, content and layout of the GOV.UK website;</li> <li>- databases, configurations, code, instructions, technical documentation, schema and architecture to the extent relating to the Front-end service hosted by DHSC,</li> </ul> <p>but not including the Supplier's Background IPRs or Supplier Specific IPRs.</p> <p>For the avoidance of doubt it is acknowledged that the MagnifEye algorithm constitutes Supplier's Background IPR.</p>
	<b>Purchase Order</b>	means the Buyer's unique number relating to the supply of the Services;
	<b>Receipt</b>	means the physical or electronic arrival of the invoice at the address specified above at 'Call-Off Contract

		charges and payment' under the heading "Who and where to send invoices to" or at any other address given by the Buyer to the Supplier for the submission of invoices from time to time;
	<b>Software Licence Principles</b>	the terms, rights and obligations set out in Clause 11.10 which will underpin and apply to the software licences granted;
	<b>Supplier Specific IPR</b>	<p>means:- any improvements and modifications to the Supplier's Background IPR created or arising out of the performance by the Supplier specifically for the purposes of this Call-Off Contract</p> <ul style="list-style-type: none"> <li>- any API developed to integrate the augmented algorithm into Buyer and/or NHS Digital services and IT infrastructure;- the MHRA submission including the Retraining Protocol and [the review protocol for the ATS];</li> <li>- databases (to the extent they do not include Buyer Data), configurations, code, instructions, technical documentation, schema and architecture to the extent they relate to the Supplier's algorithm,</li> </ul> <p>excluding the Buyer Specific IPRs.</p>
	<b>UK Data Protection Laws</b>	means the GDPR as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (" <b>UK GDPR</b> "), together with the Data Protection Act 2018, the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 and

	other data protection or privacy legislation in force from time to time in the United Kingdom;
<b>Unavoidable Losses</b>	means only the Losses specified as such in the Order Form (if any) which the Supplier may incur in the event of the Buyer ending the Call-Off Contract pursuant to Clause 18.1;

1) Paragraph 1.4 of this Order Form shall be deleted in its entirety and replaced with the following:

The Supplier Terms and Conditions are disappplied in their entirety from this Call-Off Contract. Accordingly, clause 8.3.5 of the Framework Agreement shall also be disappplied from this Call-Off Contract. In cases of any ambiguity or conflict, the order of precedence set out in the remainder of clause 8.3 of the Framework Agreement shall apply.

2) Clauses 11.2 and 11.3 of the Call-Off terms shall be deleted in their entirety and replaced with the following new Clause 11.2:

11.2A All Supplier Specific IPRs shall vest in the Supplier absolutely.

11.2B The Supplier hereby grants the Buyer a non-exclusive, transferable, royalty-free licence (with a right to sub-license) for the Call-Off Contract Term to use any Supplier Specific IPR, Background IPRs or IPRs owned by a third party used to provide the Services including those that are embedded within or which are an integral part of the Supplier Specific IPRs and to the extent required to use the Supplier Specific IPRs in connection with the Services.

11.2C The Buyer shall own all intellectual property rights in the Buyer Specific IPR. The Supplier hereby assigns to the Buyer, with full title guarantee, title to and all rights and interest in the Buyer Specific IPRs and shall procure that any third party owner of the Buyer Specific IPRs assigns them to the Buyer on the same basis.

11.2D The assignment under Clause 11.2C shall be a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Buyer Specific IPRs.

	<p>11.2E If requested to do so by the Buyer, the Supplier shall without charge to the Buyer execute all documents and do all such further acts as the Buyer may require to perfect the assignment under Clause 11.2C and shall procure that any third party owner of the Buyer Specific IPRs does so on the same basis.</p> <p>11.2F The Buyer shall grant to the Supplier a non-exclusive licence of the Buyer Specific IPRs solely to enable the Supplier to provide the Services for the duration of the Call-Off Contract including (but not limited to) the right to grant sub-licences to Subcontractors provided that: any relevant Subcontractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 8.80 to 8.88 of the Framework Agreement (as incorporated into this Call-Off Contract) and Clause 10 of this Call-Off Contract; the Supplier shall not without approval use the licensed materials for any other purpose or for the benefit of any person other than the Buyer.</p> <p>11.2G For all licences granted, the Software Licence Principles shall apply.</p> <p>11.2H In respect of all Buyer Data, the Buyer shall be the owner of all such Buyer Data and any Background IPRs and new IPR in such Buyer Data and any modifications, updates and amendments in relation to the same. The Supplier may not assign, license or otherwise deal with any Buyer Data or IPRs in such Buyer Data without the Buyer's specific written consent.</p> <p>11.2I On the Ending of this Call-Off Contract , the licence granted by the Buyer to the Supplier pursuant to clause 11.2F shall terminate automatically and the Supplier shall:</p> <p>11.2I.1 cease use of the Buyer Software, the Buyer Background IPR and the Buyer Data (as the case may be) in accordance with the agreed transition plan, save that Supplier shall be entitled to continue using Buyer Data to the extent permitted under the DPA;</p> <p>11.2I.2 at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Software, the Buyer Background IPR and the Buyer Data, provided that if the Buyer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Buyer Software, the Buyer Background IPR and the Buyer Data (as the case may be);</p>
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	<p>11.2I.3 and ensure, so far as reasonably practicable, that any Buyer Software, Buyer Background IPR and Buyer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Buyer Software, Buyer Background IPR and/or Buyer Data.</p> <p>11.2I.4 Notwithstanding Clauses 11.2F and 11.2I, the Supplier may continue to use the Buyer Data in accordance with the provisions of the DPA.</p> <p>11.2J If the Supplier wishes to use open source software (which is, computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPRs in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge) then the Supplier shall:</p> <p>11.2J.1 notify the Buyer in writing giving details of the licence terms and whether there are alternative software providers which the Supplier could seek to use; and</p> <p>11.2J.2 identify all items of open source software used and proposed to be used in an up to date register of open source software; and</p> <p>11.2J.3 provide copies of the open source register and the licences upon request by the Buyer.</p> <p>11.2K Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent. The Supplier acknowledges and agrees that AI Reader API Service shall be white-labelled and appear on the Buyer's gov.uk website with Buyer branding and will not feature any branding, name, logo or trademark of the Supplier.</p> <p>Clause 11.4 shall be deleted in its entirety and replaced with the following:</p> <p>11.4 The Supplier must not use third-party IPRs or Background IPRs in relation to the Buyer Specific IPRs if it can't obtain the grant of a licence acceptable to the Buyer.</p> <p>New clauses 11.9 and 11.10 shall be added as follows:</p>
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## **11.9 Interoperability**

Subject to Paragraph 2 of Order Form Schedule 1, the Supplier undertakes to maintain all interface and interoperability between third party software or services and software in the Supplier Specific IPR or Supplier Background IPR as required for the performance of the Services or delivery of any Deliverables.

### **11.10 Principles for Software Licences**

11.10.1 The following requirements shall take priority above all terms, conditions and specifications set out in this Call-Off Contract (including without limitation any embedded documents and terms), and the Supplier shall ensure that the software licences meet and conform with the following requirements:

- (a) The Buyer shall be entitled, free of charge, to sub license the software to the Buyer Team solely to the extent necessary for the Buyer Team to provide services in connection with the Services (including to perform obligations to support the Buyer to attain and enjoy the benefit of this Call-Off Contract and the Services), provided that Buyer shall remain responsible for compliance by any such sub-licensees with the relevant terms of this Call-Off Contract. .
- (b) The Buyer's remit involves the Buyer buying services for or on behalf of the NHS and social care entities. Nothing in the licences for any of the software shall have the effect of restricting the Buyer from discharging such remit which includes the ability of the Buyer to offer software and services to the NHS and social care entities.
- (c) The Buyer shall be entitled to deploy the software at any location from which the Buyer and/or any contractor and/or Subcontractor of the Buyer is undertaking services pursuant to which the software is being licenced.
- (d) Any software licenced to the Buyer on a named user basis shall permit the transfer from one user to another user, free of charge provided that the Supplier is notified of the same (including without limitation to a named user who is a contractor and/or Subcontractor of the Buyer).
- (e) The Supplier shall ensure that the Buyer shall be entitled to assign or novate all or any of the software

	<p>licences free of charge to any other central government entity, by giving the licensor prior written notice.</p> <p>(f) The Supplier shall notify the Buyer in advance if any software or service permits the Supplier or any third-party remote access to the software or systems of the Buyer.</p> <p>(g) Where the Supplier is responsible for the calculation of the appropriate number of users for software, and it is later shown there is a shortfall of licences, the Supplier shall be responsible for all costs of the Buyer.</p> <p><b>3)</b> Clauses 18.2 and 18.3 of the Call-Off terms shall be deleted in their entirety and replaced with the following new Clauses 18.2 and 18.3:</p> <p><b>18.2</b> The Parties agree that the:</p> <ul style="list-style-type: none"><li>• Buyer's right to End the Call-Off Contract under clause 18.1 is reasonable considering the type Service being provided</li><li>• Call-Off Contract Charges paid during the notice period is reasonable compensation and covers all the Supplier's Losses, unless Unavoidable Losses are specified in the Order Form, in which case clause 18.3 shall apply to such Unavoidable Losses.</li></ul> <p><b>18.3</b> Subject to clause 24 (Liability), and if this clause is specified to apply in the Order Form, if the Buyer Ends this Call-Off Contract under clause 18.1, it will indemnify the Supplier against any Unavoidable Losses incurred by the Supplier, provided that the Supplier takes all reasonable steps to mitigate the Unavoidable Losses. If the Supplier has insurance, the Supplier will reduce its Unavoidable Losses by any insurance sums available. The Supplier will submit a fully itemised and costed list of the Unavoidable Losses with supporting evidence.</p> <p>A new Clause 18.4A shall be added as follows:</p> <p><b>18.4A</b> The Buyer shall have the right to end this Call-Off Contract with immediate effect by written notice to the Supplier, if all the Supplier's MHRA derogations for the In-Scope Test Kits are removed, or if the Supplier fails to achieve a CA marking</p>
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	<p>for any In-Scope Test Kits upon the expiry of the relevant derogation.</p> <p><b>4)</b> A new Clause 32.4 shall be added and shall take precedence over Clause 8.11 of the Framework Agreement for the sole purpose of interpretation of this Call-Off Contract in relation to General Changes of Law:</p> <p><b>32.4</b> Any required changes to the Services or this Call-Off Contract after the Start Date arising out of or in connection with the United Kingdom's withdrawal from the European Union (that is, ceases to be an EU Member State) shall be addressed as a General Change in Law, which means the Supplier shall not be entitled to reduce the functionality or performance of the Services or increase the Charges.</p> <p><b>5)</b> New Clauses 4A and 4B shall be added as follows:</p> <p><b>4A IR35</b></p> <p><b>4A.1</b> This Call-Off Contract constitutes a contract for the provision of goods and/or services. Where the Supplier (or its Subcontractors) have included one or more people that are non-permanent members of staff that are not on the Supplier's (or its Subcontractors) payroll ("Contractor(s)") to fulfil its service obligations under this Call-Off Contract, the Supplier shall be fully responsible for and shall indemnify the Buyer for:</p> <ul style="list-style-type: none"> <li>• any proceedings, claims or demands by any third party (including specifically, but without limitation, HMRC and any successor, equivalent or related body pursuant to the IR35 legislation and/or any of the provisions of Income Tax Regulations);</li> <li>• any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the services or any payment or benefit received by the Contractor in respect of the services, where such recovery is not prohibited by law; and</li> <li>• all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Buyer in connection with or in consequence of any</li> </ul>
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	<p>such liability, deduction, contribution, assessment or claim.</p> <p>4A.2 The Buyer may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Supplier.</p> <p>4A.3 The Supplier warrants that it is not, nor will it prior to the cessation of this Call-Off Contract, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.</p> <p>4A.4 The Supplier shall monitor the provision of the services and notify the Buyer where it considers that the activity of the Buyer may impact the Suppliers' (or its Subcontractors) IR35 Assessment in relation to the Contractors.</p> <p><b>4B Security of Supplier Staff</b></p> <p>4B.1 Supplier Staff shall be subject to pre-employment checks that include, as a minimum: verification of identity, employment history, unspent criminal convictions and right to work, as detailed in the HMG Baseline Personnel Security Standard (<a href="https://www.gov.uk/government/publications/government-baseline-personnel-security-standard">https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</a>), as may be amended or replaced by the Government from time to time.</p> <p>4B.2 The Supplier shall agree on a case by case basis which Supplier Staff roles which require specific government National Security Vetting clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Buyer Data.</p> <p>4B.3 The Supplier shall prevent Supplier Staff who have not yet received or are unable to obtain the security clearances required by this clause from accessing systems which store, process, or are used to manage Buyer Data, or from accessing Buyer premises, except where agreed with the Buyer in writing.</p> <p>4B.4 All Supplier Staff that have the ability to access Buyer Data or systems holding Buyer Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Buyer in writing, this training must be undertaken annually.</p>
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	<p>4B.5 Where Supplier Staff are granted the ability to access Buyer Data or systems holding Buyer Data, those Supplier Staff shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need such access or leave the organisation, their access rights shall be revoked within one (1) Working Day.</p> <p><b>6)</b> A new Clause 16.8 shall be added as follows:</p> <p>16.8 The Supplier warrants and represents that it has complied with and, subject to Paragraph 2 of Order Form Schedule 1, throughout the Call Off Contract Period will continue to comply with the Cyber Security Requirements.</p> <p><b>7)</b> A new clause 17A shall be added to the Call-Off terms and conditions as follows:</p> <p>17A The Supplier warrants and represents that it has all consents, registrations, approvals, licences and permissions relating to Medical Devices as recommended or stipulated by any materials published by the Medicines and Healthcare Products Regulatory Agency.</p> <p><b>8)</b> Clauses 12.1 and 12.3 of the Call-Off terms and conditions shall be deleted in their entirety and replaced with the following new Clauses 12.1, 12.3 and 12.4:</p> <p>12.1 The Supplier must:</p> <ul style="list-style-type: none"> <li>• comply with the Buyer's written instructions and this Call-Off Contract when Processing any Buyer Data, including but not limited to Buyer Personal Data;</li> <li>• only Process the Buyer Data in accordance with the terms of the DPA;</li> <li>• take reasonable steps to ensure that any Supplier Staff who have access to any Buyer Data, including but not limited to Buyer Personal Data act in compliance with Supplier's security processes.</li> </ul> <p><b>9)</b> Clause 21.8.3 shall be deleted in its entirety and replaced with the following:</p> <p>21.8.3 the handover/ transfer of Buyer Specific IPR items to the Buyer or a replacement supplier.</p> <p><b>10)</b> A new Clause 28A shall be added as follows:</p>
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	<p><b>28A Corporate Social Responsibility Conduct and Compliance</b></p> <p>28A.1 The Buyer applies corporate and social responsibility values to its business operations and activities which are consistent with the Government's corporate social responsibility policies, including, without limitation, those policies relating to anti-bribery and corruption, health and safety, the environment and sustainable development, equality and diversity.</p> <p>28A.2 The Supplier represents and warrants that it:</p> <p>28A.2.1 complies with all CSR Laws;</p> <p>28A.2.2 requires its Subcontractors and any person under its control, to comply with all CSR Laws; and</p> <p>28A.2.3 has adopted a written corporate and social responsibility policy that sets out its values for relevant activity and behaviour (including, without limitation, addressing the impact on employees, clients, stakeholders, communities and the environment by the Supplier's business activities).</p> <p>28A.3 The Supplier shall notify the Buyer in the event that its corporate and social responsibility policies conflict with, or do not cover the same subject matter in an equivalent level of detail as is in, the CSR Policies.</p> <p><b>11) A new Clause 28B shall be added as follows:</b></p> <p><b>28B Modern Slavery</b></p> <p>28B.1 The Supplier represents and warrants that at the Start Date neither the Supplier, nor any of its officers and employees:</p> <p>28B.1.1 have been convicted of any offence involving slavery and human trafficking; and</p> <p>28B.1.2 having made reasonable enquiries, so far as it is aware, have been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.</p>
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	<p>28B.2 The Supplier shall implement due diligence procedures for its Subcontractors and other participants in its supply chains to ensure that there is no slavery or human trafficking in its supply chains.</p> <p>28B.3 The Supplier shall prepare and deliver to the Buyer on request, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.</p> <p><b>12)</b> A new Clause 34 shall be added as follows:</p> <p><b>34 Assignment and Novation</b></p> <p>The Buyer may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Call-Off Contract and/or any associated licences to NHS Digital, NHS England, NHSX and / or any Central Government Body, including an Executive Agency, and the Supplier shall, at the Buyer's request, enter into an agreement in such form as the Buyer shall reasonably specify in order to enable the Buyer to exercise its rights pursuant to this clause 34 (Assignment and Novation).</p> <p><b>13)</b> A new Clause 35 shall be added as follows:</p> <p><b>35 Subcontracts</b></p> <p>The Supplier shall ensure that each material Subcontract shall include:</p> <p>35.1 a right under the Contracts (Rights of Third Parties) Act 1999 for the Buyer to enforce any provisions under the material Subcontract which confer a benefit upon the Buyer;</p> <p>35.2 a provision enabling the Buyer to enforce the material Subcontract as if it were the Supplier;</p> <p>35.3 obligations no less onerous on the Subcontractor than those imposed on the Supplier under this Call-Off Contract;</p> <p>35.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the material Sub-Contract to the Buyer; and</p> <p>35.5 provisions which will enable the Supplier to discharge its</p>
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	<p>obligations under the Call-Off Contract.</p> <p><b>14)</b> A new Clause 35A shall be added as follows:</p> <p><b>35A Offshore Working</b></p> <p>35A.1 Where non-UK Supplier staff and/or non-UK Subcontractors are used, the Supplier shall ensure it outlines its approach for offshore delivery in accordance with Schedule 7 (GDPR Information) and any specific security requirements agreed.</p> <p><b>15)</b> A new clause 7.2A shall be added as follows:</p> <p><b>7.2A Electronic Invoicing</b></p> <p>7.2A.1 The Buyer shall accept and process for payment an electronic invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the standard on electronic invoicing.</p> <p>7.2A.2 For the purposes of paragraph 7.2A.2, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.</p> <p><b>16)</b> New clauses 36 and 37 shall be added to the Call-Off terms and conditions as follows:</p> <p><b>36. Improving visibility of subcontract opportunities available to SMEs and VCSEs in the supply chain</b></p> <p><b>36.1</b> The Supplier shall:</p> <p>36.1.1 subject to clause 36.1.3, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Services above a minimum threshold of [REDACTED] that arise during the Term;</p> <p>36.1.2 within 90 days of awarding a Subcontract to a Subcontractor, update the notice on Contracts Finder with details of the successful Subcontractor;</p> <p>36.1.3 monitor the number, type and value of the Subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;</p> <p>36.1.4 provide reports on the information at clause 36.1.3 to the Buyer in the format and frequency as reasonably specified by the Buyer;</p>
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	<p>and</p> <p>36.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.</p> <p>36.2. Each advert referred to at clause 36.1.1 above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.</p> <p>36.3. The obligation at clause 36.1.1 shall only apply in respect of subcontract opportunities arising after the contract award date.</p> <p>36.4. Notwithstanding clause 36.1, the Buyer may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.</p> <p><b>17) A new Clause 38 shall be added as follows:</b></p> <p><b>38 Execution and Counterparts</b></p> <p>38.1 This Call-Off Contract may be executed in any number of counterparts (including by electronic transmission), each of which when executed shall constitute an original but all counterparts together shall constitute one and the same instrument.</p> <p>38.2 Execution of this Call-Off Contract may be carried out in accordance with the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (SI 2016/696) and the Electronic Communications Act 2000. In the event each Party agrees to sign this Call-Off Contract by electronic signature (whatever form the electronic signature takes) it is confirmed that this method of signature is as conclusive of each Party's intention to be bound by this Call-Off Contract as if signed by each Party's manuscript signature. In such situation, this Call-Off Contract shall be formed on the date on which both Parties have electronically signed the Call-Off Contract as recorded in the Buyer's electronic contract management system.</p> <p><b>18) Schedule 4 - Processing Data (Framework Agreement)</b></p> <p>17.3) The reference to paragraph 16 in paragraph 28 of Schedule 4 of the Framework Agreement shall be deleted and replaced with a reference to paragraph 17.</p>
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<b>Public Services Network (PSN)</b>	NA
<b>Personal Data and Data Subjects</b>	All personal data will be processed in accordance with the DPA.

## 1. Formation of contract

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

## 2. Background to the agreement

- 2.1 The Supplier is a provider of G-Cloud Services and agreed to provide the Services under the terms of Framework Agreement number RM1557.12.
- 2.2 The Buyer provided an Order Form for Services to the Supplier.
- 2.3 The individuals set out below shall execute this Call-Off Contract, on behalf of the Buyer and the Supplier, either using a manuscript signature or an electronic signature. A manuscript signature shall be placed in the execution block below, an electronic signature shall be evidenced in an execution block to be attached as the final page of this Call-Off Contract:



<b>Signed:</b>	Supplier	Buyer
<b>Name of individual signing:</b>	[REDACTED]	[REDACTED]
<b>Title:</b>	CEO	Commercial Director
<b>Email:</b>	[REDACTED]	[REDACTED]
<b>Signature (only applicable for manuscript signature):</b>		[REDACTED]
<b>Date (only applicable for manuscript signature):</b>	 CF2E02AC862840A7B3A218D632E6B1EE	28/05/21

# Schedule 1: Services

The services provided by the Supplier will be separated in to 5 core work streams, these are the following (each a 'Service Deliverable'):

1. **LFD AI Reader API Service:** once the system is live in production, the Supplier will run the service and return positive, negative, void or invalid Lateral Flow Test result readings for images submitted via the API.
2. **Service desk support:** Provide 24x7x365 support for all incident and problem tickets. Access to this service desk to be reached via email, direct dial and other communication tool-sets as approved by the Buyer (for example, Slack)
3. **Obtaining CA Mark,** a one-off regulatory document submission for full IVDD certification and ongoing monthly submission of MHRA reporting requirements to support EUA until CA marking is received
4. **Re-training and Validation of new Test Kits.** When new test kits enter the supply chain the Supplier will retrain the algorithm and re-validate its performance against existing EUA or CA Mark as applicable.
5. **Algorithm development and management:** where updates to the algorithm are required, the Supplier will re-train and re-validate its performance against existing EUA or CA Mark as applicable.

## 1. Services:

### 1.1.1. Performance Requirements

- 1.1.1.1. Real World Accuracy: The AI Reader API Service (as per Service Deliverable 1 above) must meet or exceed 95% sensitivity and specificity in its performance. This will be evaluated through a statistically representative sample of real world images on a monthly basis from this Call-Off Contract and compared to AI read prediction for the same image.
- 1.1.1.2. The Supplier shall comply with the technical requirements for productionisation as set out in paragraph 1.2.3. below for LFD AI Reader API Service
- 1.1.1.3. The Supplier shall comply with the quality requirements for productionisation as set out in paragraph 1.2.4 below for LFD AI Reader API Service

## 1.2. LFD AI Reader API Service

### 1.2.1. Service Description

The Supplier shall expose a REST API endpoint as a business service to provide an Artificial Intelligence (AI) Machine Learning (ML) interpretation of the test results of an image of a Covid-19 Test Lateral Flow Device (LFD) sent to the service. The AI API takes an id, rotation vector and image of the LFD as an input and returns an AI interpreted test result by carrying out image detection using a trained Machine Learning

model. The test result will consist of the image identifier, interpreted test result value (which can be Positive, Negative or Void) and a value which represents confidence level in the returned result. The In-Scope Test Kit sets out the in-scope LFDs.

1.2.2. Performance Requirements:

- 1.2.2.1. the API must be able to support 500 tests per second ("TPS") without any degradation to service performance;
- 1.2.2.2. API response time shall be less than 2 seconds for up to 95% of traffic and 4 seconds for up to 99% (time from inbound request receipt to call-back);
- 1.2.2.3. the AI Reader API Service must meet the availability targets set out in Appendix 3 of this Order Form Schedule 1;
- 1.2.2.4. the AI Reader API Service must meet and maintain the requirements of the MHRA Study Protocol or CA marking in terms of specificity / sensitivity;

1.2.3. Technical Requirements:

- 1.2.3.1. the architecture of the AI Reader API Service must support horizontal and vertical scaling;
- 1.2.3.2. the Supplier must implement TLS MA X509 certificate
- 1.2.3.3. the Supplier must use UK based data centres for all data processing and hosting data at rest;
- 1.2.3.4. the Supplier must implement RESTful API with asynchronous call-back mechanism;
- 1.2.3.5. the Supplier must encrypt (or ensure that the relevant third party cloud hosting provider encrypts) all data (including Personal Data) at rest and in transit;
- 1.2.3.6. the Supplier must ensure that error logs and notification events are generated on failures from application and infrastructure standpoints.

1.2.4. Quality Requirements:

- 1.2.4.1. the AI Reader API Service must meet and maintain derogation from MHRA as Software as a Medical Device for the In-Scope Test Kits;
- 1.2.4.2. the Supplier must use all reasonable efforts to ensure that the AI Reader API Service obtains CA marking for Software as a Medical Device (SaMD) within 6 months of obtaining the relevant derogation;
- 1.2.4.3. the Supplier must ensure that the application is pro-actively monitored for key performance and load metrics;
- 1.2.4.4. the Supplier shall retain any technical monitoring and statistical data for future analysis. This includes technical resources log, output from performance monitoring tools and system management tools
- 1.2.4.5. the Supplier shall provide access as requested by the Buyer or its relevant arm's length bodies to audit logs for all transactions.

#### 1.2.5. Acceptance Criteria:

The Supplier shall ensure compliance with the following obligations:

- 1.2.5.1. all Performance Requirements set out in paragraph 1.2.2 of this Order Form Schedule 1 must be demonstrably met;
- 1.2.5.2. all Technical Requirements set out in paragraph 1.2.3 of this Order Form Schedule 1 must be demonstrably met;
- 1.2.5.3. all Quality Requirements set out in paragraph 1.2.4 of this Order Form Schedule 1 must be demonstrably met; and
- 1.2.5.4. the Supplier shall provide monthly performance data to the Buyer demonstrating that the AI Reader API Service continues to meet the Performance Requirements set out in paragraph 1.2.2 of this Order Form Schedule 1.

### 1.3. Service Desk Support

#### 1.3.1. Service Description

The Supplier shall provide incident management support by phone, Buyer approved communication toolsets (i.e Slack) and email for the LFD AI Reader API Service and shall meet the service levels set out in Appendix 3 of this Order Form Schedule 1.

### 1.4. Obtaining CA Mark

#### 1.4.1. Service Description

The Supplier will provide monthly reports to the MHRA whilst seeking CA marking for the AI Algorithm as SaaMD. Buyer shall promptly provide such information as is reasonably requested by the Supplier as being reasonably required to comply with this obligation and Supplier shall ensure that such reports are also provided to the Buyer for review.

#### 1.4.2. Acceptance Criteria:

The Supplier shall comply with the following obligations:

- 1.4.2.1. the Supplier shall provide monthly reports to the MHRA in order to ensure that it maintains its derogation for existing In-Scope Test Kits and the inclusion of any new test kit types on-boarded through the “Re-training and Validation of new Test Kits” process set out in paragraph 1.5 below.
- 1.4.2.2. the Supplier shall diligently pursue a CA mark for the AI Reader API Service as SaaMD within 6 months of the date of granting of the applicable derogation.

### 1.5. Re-Training and Validation of new Test Kits

#### 1.5.1. Service Description

From time to time the Buyer will introduce new Lateral Flow Device Test Kits into its supply chain. This may be because of variation in manufacturing from existing test kit

suppliers, or as new vendors are on-boarded. When this happens the Buyer will advise the Supplier that the following services are required (as the new Lateral Flow Device Test Kit is being incorporated into the definition of 'In-Scope Test Kit') within the reasonable timeframe set by the Buyer.

When notified by the Buyer, and subject to Paragraph 2 of Order Form Schedule 1, the Supplier shall provide the following Re-Training and Validation of New Test Kits Service in accordance with the fixed cost basis set out in Order Form Schedule 2:

- re-train the AI algorithm following the pre-agreed Retraining Protocol;
- submit an application for that the existing MHRA approval / derogation of the algorithm as SaaMD to be updated to include the new In-Scope Test Kit.

#### 1.5.2. Acceptance Criteria:

The Supplier shall provide the Buyer with evidence of the updates made to the following:

1.5.2.1. existing derogation from MHRA for the new test kit type, or

1.5.2.2. CA mark to include the new test kit types,  
as applicable.

### 1.6. Algorithm Development and Management

#### 1.6.1. Service Description

There are three scenarios where the Supplier may be required to update the algorithm:

a) Where Supplier must improve the performance of the algorithm in order to continue to meet MHRA EUA or CA mark requirements contained in the EUA, at no additional cost to the Buyer. In these circumstances the Supplier will promptly carry out any required updates to the algorithm and shall notify the Buyer of any amendments carried out;

b) Where the Supplier unilaterally decides to improve the performance of the algorithm and offers this improvement, at no additional cost to the Buyer;

c) Where the Buyer requests changes to the API or the algorithm. This process will be handled in accordance with Paragraph 2 of Order Form Schedule 1.

1.6.2 The acceptance criteria set out in paragraph 1.2.5 of this Order Form Schedule 1 shall apply to the Algorithm Development and Management service as set out in paragraph 1.6.1 above.

### 2. Amendments to the Deliverables:

2.1. The Supplier acknowledges and agrees that the Buyer may, in its sole discretion, request amendments to the requirements and Deliverables to be provided by the Supplier in accordance with this Call-Off Contract.

2.2. If the Buyer wishes to (i) amend the requirements and/ or Deliverables or (ii) amend any of the requirements of the Supplier set out in this Call-Off Contract, it shall notify the Supplier

in writing of the required amendments. The Supplier shall respond to the Buyer within five working days of receipt of the Supplier's notification outlining any additional charges (if any) and the timeline to implement any such amendments. The Buyer shall notify the Supplier promptly following the Supplier's response, of whether or not it accepts the proposed charge and timeline. The Supplier shall not unreasonably refuse any such amendments. To the extent the amended requirements and/ or Deliverables relate to scope outside of the Call-Off Contract prior to the amended requirements, and the ownership of intellectual property rights in the relevant type(s) of deliverable has not already been addressed by the existing terms set out in this Call-Off Contract, the parties shall agree in good faith provisions relating to ownership of any intellectual property arising as a result of the amended requirements and/ or Deliverables. Where the ownership of intellectual property rights in the relevant types(s) of deliverables has already been addressed in the definitions of Buyer Specific IPR and Supplier Specific IPR, these shall remain as is.

### **3. Contract Governance**

3.1. The Parties agree that they shall attend fortnightly contract review meetings in order to review the Supplier's performance of the contract against the terms set out in this Call-Off Contract.

3.2. The key objectives and purpose of this review meeting shall include:

- 3.2.1. reviewing the Implementation Plan and the progress and achievement of Milestones and key activities;
- 3.2.2. ensuring programme risks are managed in line with the Buyer and Supplier expectations;
- 3.2.3. ensuring the Supplier keeps the Buyer updated in relation to the MHRA derogation and achievement of CA markings for the In-Scope Test Kits;
- 3.2.4. ensuring adequate and appropriate internal communication regarding the Services; and
- 3.2.5. reviewing progress against Deliverables.

3.3. The meetings shall be attended by the following people:

- 3.3.1. Buyer: [REDACTED]  
[REDACTED]
- 3.3.2. Supplier: [REDACTED]

3.4. The meeting shall take place via video conferencing, to be scheduled by the Supplier at least 5 Working Days prior to the date of the meeting.

3.5. If any of the persons referred to paragraph 3.3 above are unable to attend a meeting, the relevant party may appoint a substitute provided that such substitute has at least the same or higher seniority and is authorised to deal with the items on the agenda at such meeting.

- 3.6. The Supplier shall ensure that appropriate meeting documentation is provided to the Buyer either prior to, or at each meeting, as reasonably required to support the agenda of such meeting.
- 3.7. The Supplier will circulate minutes of appropriate governance meetings attended by the Buyer within two (2) Working Days of the date of the meeting. The Buyer shall provide any comments on those minutes and the Supplier shall amend and recirculate the minutes accordingly. The content of meeting minutes shall not be taken as agreement by the Buyer to waive, amend or create any forbearance in respect of its rights under this Call-Off Contract.
- 3.8. In addition to the above, the Supplier shall, as may from time to time be reasonably requested by the Buyer:
- 3.8.1. attend further meetings with the Buyer or other relevant third parties on an ad hoc basis; and
  - 3.8.2. send suitable representatives to meetings held between the Buyer and other relevant third parties to provide input into matters to be discussed at those meetings.

**Appendix 1: API Specification**



# **Appendix 2: Retraining Protocol**

# **G-Cloud 12 Call-off**

# **Contract**

Protocol for retraining AI algorithm for  
new Lateral Flow Tests

07 April 2021

## Document template details and quality control

Document name	MAG- AI-TPRO-01			
Description	Protocol for retraining AI algorithm for new Lateral Flow Tests			
Current version	01			
Date	07 April 2021			
Confidentiality	<p>This document is confidential and intended solely for the use of the individual/s and parties to whom it is addressed, distributed or any other recipient expressly authorised by Sensyne Health, in writing or otherwise, to receive the same.</p> <p>If you are not the addressee or authorised recipient of this document, any disclosure, reproduction, copying, distribution, or other dissemination or use of this communication is strictly prohibited. Note. If this document is printed, it is no longer a controlled document.</p>			
Document version history	██████████	██████████	████████████████ ████	
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	██████████	██████████	████████████████ ████	Modifications to address feedback from MHRA

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Retraining the algorithm for new Test Kit Types



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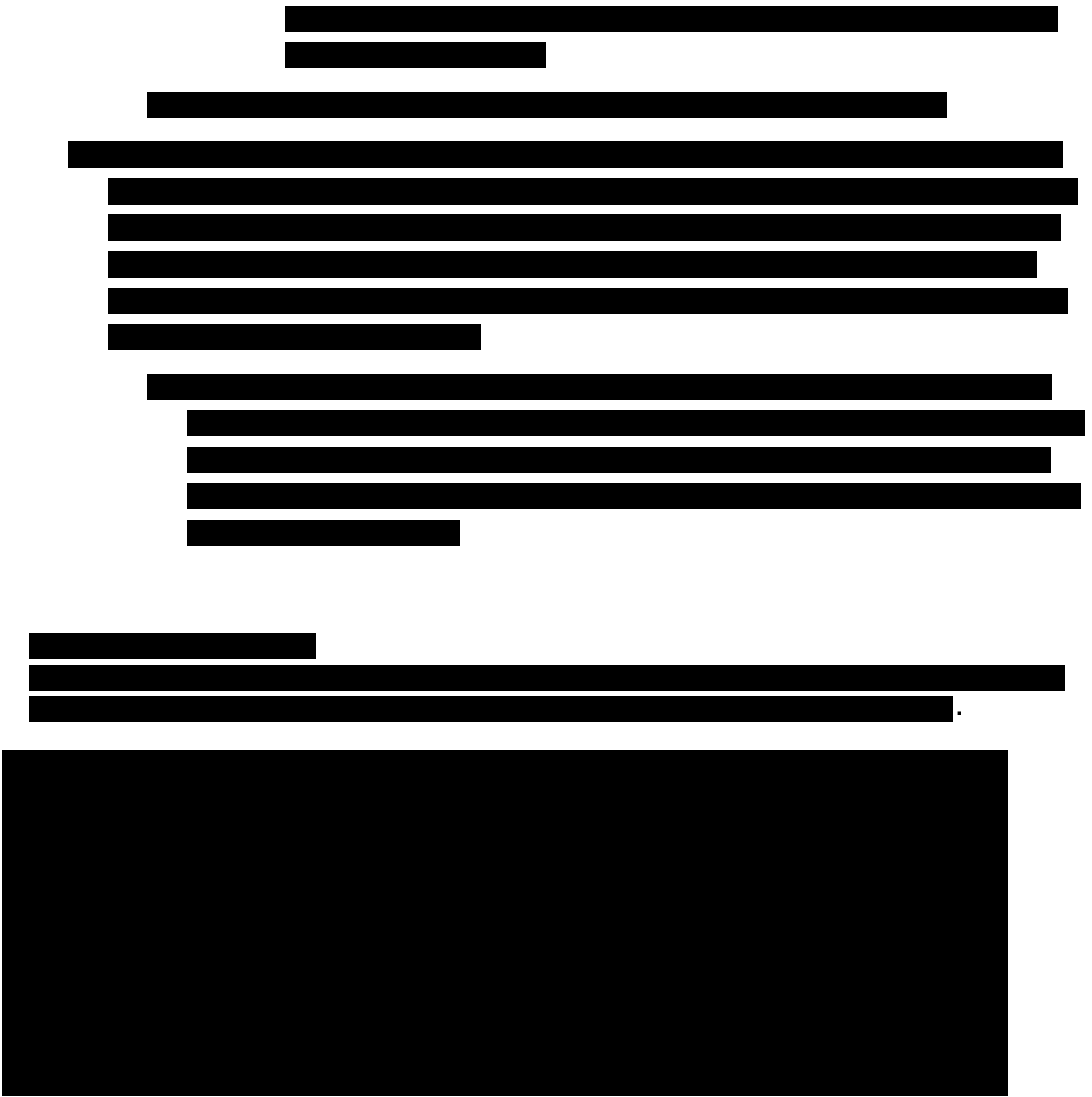
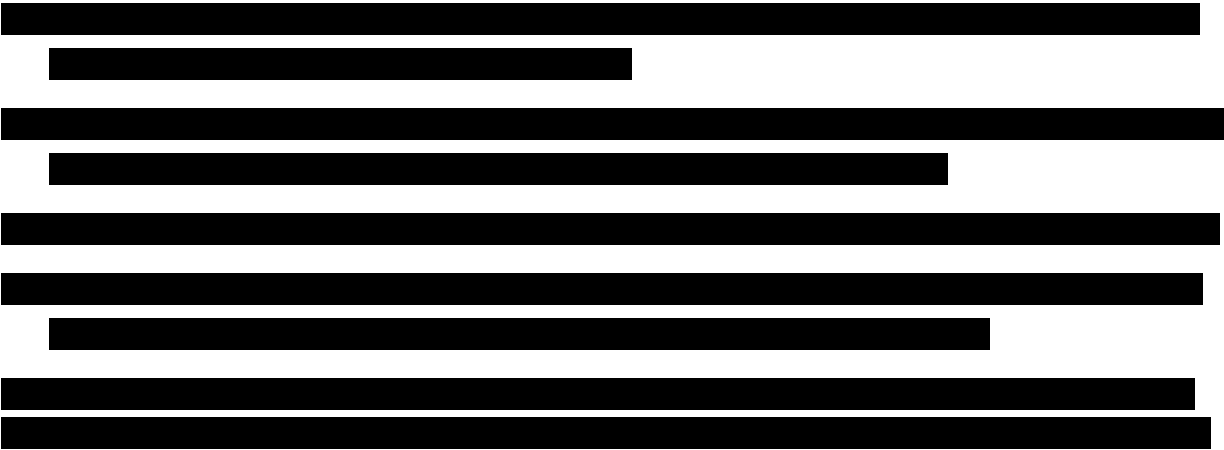


Figure 1: Workflow for data retraining



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## Appendix 3: Service Levels

# G-Cloud 12 Call-off Contract

## Service Level Agreement

15 APRIL 2021

Designed by Clinicians. Focused on patients. Powered by AI



### Document Template Details and Quality Control

Document No:	NHSD-SLA
Issue:	01
Date:	15 April 2021

Document title:	NHSD - Service Level Agreement - Draft
Summary/scope:	This Document outlines the Service Level Agreement (SLA) and Service Strategy between Sensyne Health Group LTD (SENSYNE) NHS Digital (NHSD) for the delivery, management and support of the MagnifEye service (SUPPORTED SOFTWARE).

Issue	Date	Details - reason for issue/nature of change
01	15 April 2021	Initial draft

Review and Approval			
Author	Title	Signed	Date
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Reviewed By	Title	Signed	Date
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# 1. Agreement Overview

## 1.1 Introduction

This Document outlines the Service Level Agreement (SLA) and Service Strategy between Sensyne Health Group LTD (Sensyne) and NHS Digital (NHSD) for the delivery, management and support of the MagnifEye service (SUPPORTED SOFTWARE).

## 1.2 Purpose

The primary objectives of this SLA are to:

- Provide a clear definition of the agreed support service model ensuring that the agreement matches the expectation from both parties.
- Provide clear definition of the roles, responsibilities and associated accountability associated to PARTIES.
- Clearly outline the change management process, the method of requesting new functionality or changes to existing.
- Clearly outline the release management process and its relation to our continual improvement service principals and change management process.
- Provide an understanding of terms which used within this agreement and the execution of the services defined.
- Provide clear definition of the internal escalation process for major incidents and day to day service operation.

## 1.3 Scope and Contractual Parameters

- 1.3.1 This SLA sets out the terms to which both parties hereby agree to adhere to in relation to the execution of support and delivery services, limited to the supported software; MagnifEye.
- 1.3.2 Due to the nature of the services provided only the following service model will be used:
  - Escalation Tiers
    - Tier 1: Ticket Triaging only
    - Tier 2: 3<sup>rd</sup> line SME engineering support.
    - Tier 3: Business level escalation.
  - The Priority categories defined within are directly associated to the urgency definitions as defined within the 'NHS Digital – Severity Level Guidelines'.
- 1.3.3 Amendments may be made to this agreement under the explicit agreement of both parties. Amendments, modifications and revisions of such amendments will be limited to the Scope of Amendment initially set out and agreed. Further amendments and revisions to the agreement herein shall require additional amendment agreements with a clearly defined scope.
- 1.3.4 Extension and early termination of this SLA must be agreed by both signatory parties.
- 1.3.5 A minimum of 60 business days' notice is required for early termination of this SLA.

## 1.4 Definitions

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

Unless otherwise defined herein, capitalised terms used in this SLA shall have the meaning given to them in the G-Cloud 12 Call-Off Contract between the parties dated [XX]

### **SUPPORTED SOFTWARE**

MagnifEye

### **ITIL**

Information Technology Infrastructure Library – IT Service Management Best Practice

### **GDPR**

General Data Protection Regulation

### **KPI**

Key Performance Indicator

### **QMS**

Quality Management System

### **SME**

Subject Matter Expert

### **GOOD INDUSTRY PRACTICE**

The degree of professional skill, care and diligence which may reasonably be expected of a highly skilled, professional organisation suitably qualified and experienced in the hosting, support and maintenance of software of the nature of the Supported Software.

### **NORMAL BUSINESS HOURS**

8am –8pm Monday – Friday

### **HOSTING INFRASTRUCTURE**

The systems, software, equipment, network, system configurations and routing configuration used by Sensyne to provide the Hosting Services.

### **MAINTENANCE EVENT**

As defined in paragraph 5 below.

### **HSSI**

High Severity Service Incident (a Major Incident) – a Priority 1 or Priority 2 incident

### **INCIDENT**

an incident is an unplanned interruption to a service, or reduction in the quality of a service.

### **PROBLEM**

a problem is a cause, or potential cause, of one or more incidents. Problems can be raised in response to a single significant incident or multiple similar incidents. They can even be raised without the existence of a corresponding incident.

### **RCA**

root cause analysis (RCA) is a method of problem solving used for identifying the root causes of faults or problems.

### **FRT**

First Response Time

### **RT**

Resolution Time

## **2. Periodic Review**

- 2.1.1 This SLA is effective during the contract term. Both PARTIES agree to review this agreement annually to ensure that the service strategy and service levels continue to match those required by the SUPPORTED SOFTWARE.
- 2.1.2 Both PARTIES agree to convene on a monthly basis to complete review of the following items:
  - Support Feedback and trends
  - Review of Major Incidents and issues.
  - Prior quarter KPI metrics.
  - Future development plans

This practice will continue through the duration of the contract term.

- 2.1.3 The appointed representatives of NHSD and SENSYNE are responsible for facilitating annual reviews of this document. Any amendments to this SLA agreed between the parties shall be represented in the form of a documented amendment.

## **3. Service Design, Service Levels, Categorisation and Prioritisation**

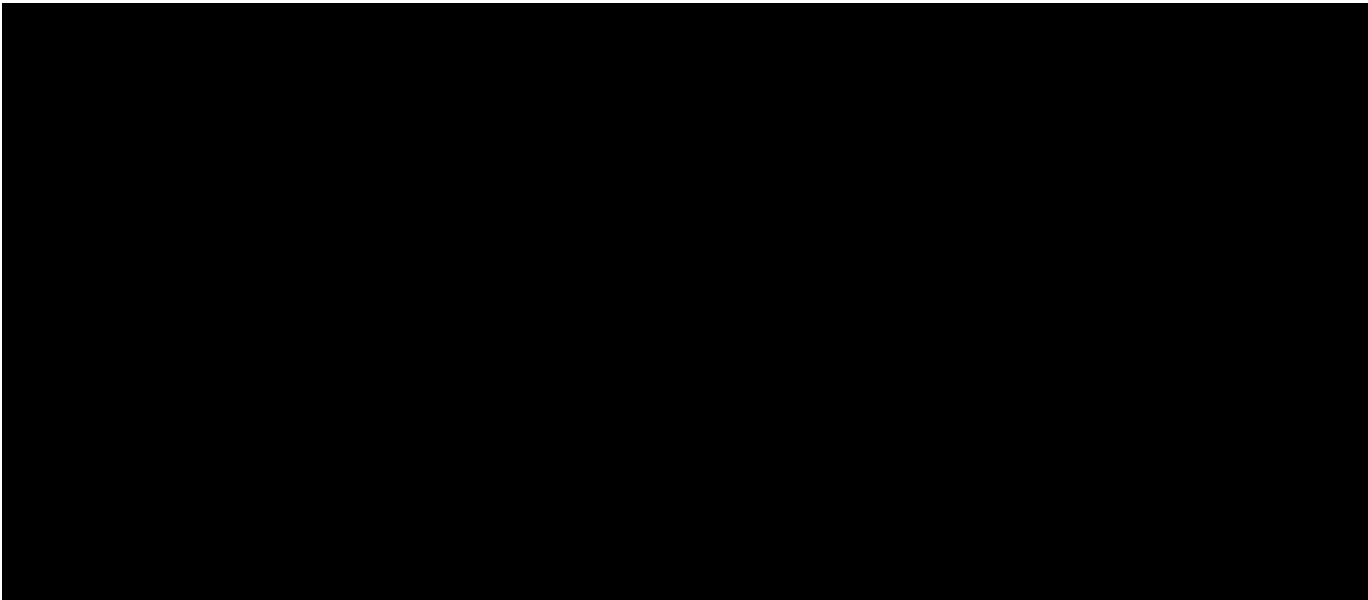
- 3.1.1 SENSYNE will provide a service modelled around the ITIL framework, this service will be designed to be service focused with strict quality assurance in place and best practice incident, change and problem management procedures.
- 3.1.2 An NHSD service desk portal will be provided to allow for ticket creation, notification, and ticket review purposes.
- 3.1.3 Email access will also be provided for the automation of ticket forwarding from NHSD issue management systems.

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## Schedule 2: Call-Off Contract charges

Charge category	Description	Unit of measure	Unit cost	No. of units	Total contract value
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MAXIMUM CONTRACT CHARGES For 3 months from contract start					£425,642

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## Customer Benefits

For each Call-Off Contract please complete a customer benefits record, by following this link;

[G-Cloud 12 Customer Benefits Record](#)

## Part B: Terms and conditions

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

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

### 2. Incorporation of terms

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

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

- 8.64 to 8.65 (Severability)
- 8.66 to 8.69 (Managing disputes and Mediation)
- 8.80 to 8.88 (Confidentiality)
- 8.89 to 8.90 (Waiver and cumulative remedies)
- 8.91 to 8.101 (Corporate Social Responsibility)
- paragraphs 1 to 10 of the Framework Agreement glossary and interpretation
- any audit provisions from the Framework Agreement set out by the Buyer in the Order Form

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

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

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

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

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

### 3. Supply of services

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

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

### 4. Supplier staff

4.1 The Supplier Staff must:

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

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

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

- 4.1.4 respond to any enquiries about the Services as soon as reasonably possible
- 4.1.5 complete any necessary Supplier Staff vetting as specified by the Buyer
- 4.2 The Supplier must retain overall control of the Supplier Staff so that they are not considered to be employees, workers, agents or contractors of the Buyer.
- 4.3 The Supplier may substitute any Supplier Staff as long as they have the equivalent experience and qualifications to the substituted staff member.
- 4.4 The Buyer may conduct IR35 Assessments using the ESI tool to assess whether the Supplier's engagement under the Call-Off Contract is Inside or Outside IR35.
- 4.5 The Buyer may End this Call-Off Contract for Material Breach as per clause 18.5 hereunder if the Supplier is delivering the Services Inside IR35.
- 4.6 The Buyer may need the Supplier to complete an Indicative Test using the ESI tool before the Start date or at any time during the provision of Services to provide a preliminary view of whether the Services are being delivered Inside or Outside IR35. If the Supplier has completed the Indicative Test, it must download and provide a copy of the PDF with the 14-digit ESI reference number from the summary outcome screen and promptly provide a copy to the Buyer.
- 4.7 If the Indicative Test indicates the delivery of the Services could potentially be Inside IR35, the Supplier must provide the Buyer with all relevant information needed to enable the Buyer to conduct its own IR35 Assessment.
- 4.8 If it is determined by the Buyer that the Supplier is Outside IR35, the Buyer will provide the ESI reference number and a copy of the PDF to the Supplier.

## 5. Due diligence

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

## 6. Business continuity and disaster recovery

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

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

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

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

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

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

## 9. Insurance

- 9.1 The Supplier will maintain the insurances required by the Buyer including those in this clause.
- 9.2 The Supplier will ensure that:
  - 9.2.1 during this Call-Off Contract, Subcontractors hold third party public and products liability insurance of the same amounts that the Supplier would be legally liable to pay as damages, including the claimant's costs and expenses, for accidental death or bodily injury and loss of or damage to Property, to a minimum of £1,000,000
  - 9.2.2 the third-party public and products liability insurance contains an 'indemnity to principals' clause for the Buyer's benefit
  - 9.2.3 all agents and professional consultants involved in the Services hold professional indemnity insurance to a minimum indemnity of £1,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date
  - 9.2.4 all agents and professional consultants involved in the Services hold employers liability insurance (except where exempt under Law) to a minimum indemnity of £5,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date
- 9.3 If requested by the Buyer, the Supplier will obtain additional insurance policies, or extend existing policies bought under the Framework Agreement.
- 9.4 If requested by the Buyer, the Supplier will provide the following to show compliance with this clause:
  - 9.4.1 a broker's verification of insurance
  - 9.4.2 receipts for the insurance premium
  - 9.4.3 evidence of payment of the latest premiums due
- 9.5 Insurance will not relieve the Supplier of any liabilities under the Framework Agreement or this Call-Off Contract and the Supplier will:



- 9.5.1 take all risk control measures using Good Industry Practice, including the investigation and reports of claims to insurers
- 9.5.2 promptly notify the insurers in writing of any relevant material fact under any Insurances
- 9.5.3 hold all insurance policies and require any broker arranging the insurance to hold any insurance slips and other evidence of insurance
- 9.6 The Supplier will not do or omit to do anything, which would destroy or impair the legal validity of the insurance.
- 9.7 The Supplier will notify CCS and the Buyer as soon as possible if any insurance policies have been, or are due to be, cancelled, suspended, Ended or not renewed.
- 9.8 The Supplier will be liable for the payment of any:
  - 9.8.1 premiums, which it will pay promptly
  - 9.8.2 excess or deductibles and will not be entitled to recover this from the Buyer

## 10. Confidentiality

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

## 11. Intellectual Property Rights

- 11.1 Unless otherwise specified in this Call-Off Contract, a Party will not acquire any right, title or interest in or to the Intellectual Property Rights (IPRs) of the other Party or its Licensors.
- 11.2 The Supplier grants the Buyer a non-exclusive, transferable, perpetual, irrevocable, royalty-free licence to use the Project Specific IPRs and any Background IPRs embedded within the Project Specific IPRs for the Buyer's ordinary business activities.
- 11.3 The Supplier must obtain the grant of any third-party IPRs and Background IPRs so the Buyer can enjoy full use of the Project Specific IPRs, including the Buyer's right to publish the IPR as open source.
- 11.4 The Supplier must promptly inform the Buyer if it can't comply with the clause above and the Supplier must not use third-party IPRs or Background IPRs in relation to the Project Specific IPRs if it can't obtain the grant of a licence acceptable to the Buyer.
- 11.5 The Supplier will, on written demand, fully indemnify the Buyer and the Crown for all Losses which it may incur at any time from any claim of infringement or alleged infringement of a third party's IPRs because of the:

- 11.5.1 rights granted to the Buyer under this Call-Off Contract
- 11.5.2 Supplier's performance of the Services
- 11.5.3 use by the Buyer of the Services
- 11.6 If an IPR Claim is made, or is likely to be made, the Supplier will immediately notify the Buyer in writing and must at its own expense after written approval from the Buyer, either:
  - 11.6.1 modify the relevant part of the Services without reducing its functionality or performance
  - 11.6.2 substitute Services of equivalent functionality and performance, to avoid the infringement or the alleged infringement, as long as there is no additional cost or burden to the Buyer
  - 11.6.3 buy a licence to use and supply the Services which are the subject of the alleged infringement, on terms acceptable to the Buyer
- 11.7 Clause 11.5 will not apply if the IPR Claim is from:
  - 11.7.2 the use of data supplied by the Buyer which the Supplier isn't required to verify under this Call-Off Contract
  - 11.7.3 other material provided by the Buyer necessary for the Services
- 11.8 If the Supplier does not comply with clauses 11.2 to 11.6, the Buyer may End this Call-Off Contract for Material Breach. The Supplier will, on demand, refund the Buyer all the money paid for the affected Services.

## 12. Protection of information

- 12.1 The Supplier must:
  - 12.1.1 comply with the Buyer's written instructions and this Call-Off Contract when Processing Buyer Personal Data
  - 12.1.2 only Process the Buyer Personal Data as necessary for the provision of the G-Cloud Services or as required by Law or any Regulatory Body
  - 12.1.3 take reasonable steps to ensure that any Supplier Staff who have access to Buyer Personal Data act in compliance with Supplier's security processes
- 12.2 The Supplier must fully assist with any complaint or request for Buyer Personal Data including by:
  - 12.2.1 providing the Buyer with full details of the complaint or request

- 12.2.2 complying with a data access request within the timescales in the Data Protection Legislation and following the Buyer's instructions
- 12.2.3 providing the Buyer with any Buyer Personal Data it holds about a Data Subject (within the timescales required by the Buyer)
- 12.2.4 providing the Buyer with any information requested by the Data Subject
- 12.3 The Supplier must get prior written consent from the Buyer to transfer Buyer Personal Data to any other person (including any Subcontractors) for the provision of the G-Cloud Services.

### 13. Buyer data

- 13.1 The Supplier must not remove any proprietary notices in the Buyer Data.
- 13.2 The Supplier will not store or use Buyer Data except if necessary to fulfil its obligations.
- 13.3 If Buyer Data is processed by the Supplier, the Supplier will supply the data to the Buyer as requested.
- 13.4 The Supplier must ensure that any Supplier system that holds any Buyer Data is a secure system that complies with the Supplier's and Buyer's security policies and all Buyer requirements in the Order Form.
- 13.5 The Supplier will preserve the integrity of Buyer Data processed by the Supplier and prevent its corruption and loss.
- 13.6 The Supplier will ensure that any Supplier system which holds any protectively marked Buyer Data or other government data will comply with:
  - 13.6.1 the principles in the Security Policy Framework:  
<https://www.gov.uk/government/publications/security-policy-framework> and the Government Security Classification policy: <https://www.gov.uk/government/publications/government-security-classifications>
  - 13.6.2 guidance issued by the Centre for Protection of National Infrastructure on Risk Management:  
<https://www.cpni.gov.uk/content/adopt-risk-management-approach> and Protection of Sensitive Information and Assets:  
<https://www.cpni.gov.uk/protection-sensitive-information-and-assets>
  - 13.6.3 the National Cyber Security Centre's (NCSC) information risk management guidance:  
<https://www.ncsc.gov.uk/collection/risk-management-collection>

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

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

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

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

13.6.6 buyer requirements in respect of AI ethical standards.

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

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

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

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

## 14. Standards and quality

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

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

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

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

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

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

## 15. Open source

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

## 16. Security

- 16.1 If requested to do so by the Buyer, before entering into this Call-Off Contract the Supplier will, within 15 Working Days of the date of this Call-Off Contract, develop (and obtain the Buyer's written approval of) a Security Management Plan and an Information Security Management System. After Buyer approval the Security Management Plan and Information Security Management System will apply during the Term of this Call-Off Contract. Both plans will comply with the Buyer's security policy and protect all aspects and processes associated with the delivery of the Services.
- 16.2 The Supplier will use all reasonable endeavours, software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software.
- 16.3 If Malicious Software causes loss of operational efficiency or loss or corruption of Service Data, the Supplier will help the Buyer to mitigate any losses and restore the Services to operating efficiency as soon as possible.
- 16.4 Responsibility for costs will be at the:
  - 16.4.1 Supplier's expense if the Malicious Software originates from the Supplier software or the Service Data while the Service Data was under the control of the Supplier, unless the Supplier can demonstrate that it was already present, not quarantined or identified by the Buyer when provided
  - 16.4.2 Buyer's expense if the Malicious Software originates from the Buyer software or the Service Data, while the Service Data was under the Buyer's control
- 16.5 The Supplier will immediately notify the Buyer of any breach of security of Buyer's Confidential Information (and the Buyer of any Buyer Confidential Information breach). Where the breach occurred because of a Supplier Default, the Supplier will recover the Buyer's Confidential Information however it may be recorded.
- 16.6 Any system development by the Supplier should also comply with the government's '10 Steps to Cyber Security' guidance:  
<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>

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

## 17. Guarantee

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

17.1.1 an executed Guarantee in the form at Schedule 5

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

## 18. Ending the Call-Off Contract

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

- 18.2 The Parties agree that the:

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

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

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

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

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

18.4.2 any fraud

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

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

18.5.2 an Insolvency Event of the other Party happens

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

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

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

## 19. Consequences of suspension, ending and expiry

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19.5.5 work with the Buyer on any ongoing work

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

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

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

## 20. Notices

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

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

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



## 21. Exit plan

- 21.1 The Supplier must provide an exit plan in its Application which ensures continuity of service and the Supplier will follow it.
- 21.2 When requested, the Supplier will help the Buyer to migrate the Services to a replacement supplier in line with the exit plan. This will be at the Supplier's own expense if the Call-Off Contract Ended before the Expiry Date due to Supplier cause
- 21.3 If the Buyer has reserved the right in the Order Form to extend the Call-Off Contract Term beyond 24 months the Supplier must provide the Buyer with an additional exit plan for approval by the Buyer at least 8 weeks before the 18 month anniversary of the Start date.
- 21.4 The Supplier must ensure that the additional exit plan clearly sets out the Supplier's methodology for achieving an orderly transition of the Services from the Supplier to the Buyer or its replacement Supplier at the expiry of the proposed extension period or if the contract Ends during that period.
- 21.5 Before submitting the additional exit plan to the Buyer for approval, the Supplier will work with the Buyer to ensure that the additional exit plan is aligned with the Buyer's own exit plan and strategy.
- 21.6 The Supplier acknowledges that the Buyer's right to extend the Term beyond 24 months is subject to the Buyer's own governance process. Where the Buyer is a central government department, this includes the need to obtain approval from GDS under the Spend Controls process. The approval to extend will only be given if the Buyer can clearly demonstrate that the Supplier's additional exit plan ensures that:
  - 21.6.1 the Buyer will be able to transfer the Services to a replacement supplier before the expiry or Ending of the extension period on terms that are commercially reasonable and acceptable to the Buyer
  - 21.6.2 there will be no adverse impact on service continuity
  - 21.6.3 there is no vendor lock-in to the Supplier's Service at exit
  - 21.6.4 it enables the Buyer to meet its obligations under the Technology Code Of Practice
- 21.7 If approval is obtained by the Buyer to extend the Term, then the Supplier will comply with its obligations in the additional exit plan.
- 21.8 The additional exit plan must set out full details of timescales, activities and roles and responsibilities of the Parties for:
  - 21.8.1 the transfer to the Buyer of any technical information, instructions, manuals and code reasonably required by the Buyer to enable a smooth migration from the Supplier

- 21.8.2 the strategy for exportation and migration of Buyer Data from the Supplier system to the Buyer or a replacement supplier, including conversion to open standards or other standards required by the Buyer
- 21.8.3 the transfer of Project Specific IPR items and other Buyer customisations, configurations and databases to the Buyer or a replacement supplier
- 21.8.4 the testing and assurance strategy for exported Buyer Data
- 21.8.5 if relevant, TUPE-related activity to comply with the TUPE regulations
- 21.8.6 any other activities and information which is reasonably required to ensure continuity of Service during the exit period and an orderly transition

## 22. Handover to replacement supplier

- 22.1 At least 10 Working Days before the Expiry Date or End Date, the Supplier must provide any:
  - 22.1.1 data (including Buyer Data), Buyer Personal Data and Buyer Confidential Information in the Supplier's possession, power or control
  - 22.1.2 other information reasonably requested by the Buyer
- 22.2 On reasonable notice at any point during the Term, the Supplier will provide any information and data about the G-Cloud Services reasonably requested by the Buyer (including information on volumes, usage, technical aspects, service performance and staffing). This will help the Buyer understand how the Services have been provided and to run a fair competition for a new supplier.
- 22.3 This information must be accurate and complete in all material respects and the level of detail must be sufficient to reasonably enable a third party to prepare an informed offer for replacement services and not be unfairly disadvantaged compared to the Supplier in the buying process.

## 23. Force majeure

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

## 24. Liability

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

- 24.1.1 Property: for all Defaults by either party resulting in direct loss to the property (including technical infrastructure, assets, IPR or equipment but excluding any loss or damage to Buyer Data) of the other Party, will not exceed the amount in the Order Form
- 24.1.2 Buyer Data: for all Defaults by the Supplier resulting in direct loss, destruction, corruption, degradation or damage to any Buyer Data, will not exceed the amount in the Order Form
- 24.1.3 Other Defaults: for all other Defaults by either party, claims, Losses or damages, whether arising from breach of contract, misrepresentation (whether under common law or statute), tort (including negligence), breach of statutory duty or otherwise will not exceed the amount in the Order Form.

## 25. Premises

- 25.1 If either Party uses the other Party's premises, that Party is liable for all loss or damage it causes to the premises. It is responsible for repairing any damage to the premises or any objects on the premises, other than fair wear and tear.
- 25.2 The Supplier will use the Buyer's premises solely for the performance of its obligations under this Call-Off Contract.
- 25.3 The Supplier will vacate the Buyer's premises when the Call-Off Contract Ends or expires.
- 25.4 This clause does not create a tenancy or exclusive right of occupation.
- 25.5 While on the Buyer's premises, the Supplier will:
  - 25.5.1 comply with any security requirements at the premises and not do anything to weaken the security of the premises
  - 25.5.2 comply with Buyer requirements for the conduct of personnel
  - 25.5.3 comply with any health and safety measures implemented by the Buyer
  - 25.5.4 immediately notify the Buyer of any incident on the premises that causes any damage to Property which could cause personal injury
- 25.6 The Supplier will ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Buyer on request.

## 26. Equipment

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

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

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

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

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

## 28. Environmental requirements

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

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

## 29. The Employment Regulations (TUPE)

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

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

- 29.2.1 the activities they perform
- 29.2.2 age
- 29.2.3 start date
- 29.2.4 place of work
- 29.2.5 notice period
- 29.2.6 redundancy payment entitlement
- 29.2.7 salary, benefits and pension entitlements
- 29.2.8 employment status
- 29.2.9 identity of employer
- 29.2.10 working arrangements
- 29.2.11 outstanding liabilities
- 29.2.12 sickness absence

- 29.2.13 copies of all relevant employment contracts and related documents
- 29.2.14 all information required under regulation 11 of TUPE or as reasonably requested by the Buyer

- 29.3 The Supplier warrants the accuracy of the information provided under this TUPE clause and will notify the Buyer of any changes to the amended information as soon as reasonably possible. The Supplier will permit the Buyer to use and disclose the information to any prospective Replacement Supplier.
- 29.4 In the 12 months before the expiry of this Call-Off Contract, the Supplier will not change the identity and number of staff assigned to the Services (unless reasonably requested by the Buyer) or their terms and conditions, other than in the ordinary course of business.
- 29.5 The Supplier will co-operate with the re-tendering of this Call-Off Contract by allowing the Replacement Supplier to communicate with and meet the affected employees or their representatives.
- 29.6 The Supplier will indemnify the Buyer or any Replacement Supplier for all Loss arising from both:
  - 29.6.1 its failure to comply with the provisions of this clause
  - 29.6.2 any claim by any employee or person claiming to be an employee (or their employee representative) of the Supplier which arises or is alleged to arise from any act or omission by the Supplier on or before the date of the Relevant Transfer
- 29.7 The provisions of this clause apply during the Term of this Call-Off Contract and indefinitely after it Ends or expires.
- 29.8 For these TUPE clauses, the relevant third party will be able to enforce its rights under this clause but their consent will not be required to vary these clauses as the Buyer and Supplier may agree.

## 30. Additional G-Cloud services

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

## 31. Collaboration

- 31.1 If the Buyer has specified in the Order Form that it requires the Supplier to enter into a Collaboration Agreement, the Supplier must give the Buyer an executed Collaboration Agreement before the Start date.

31.2 In addition to any obligations under the Collaboration Agreement, the Supplier must:

31.2.1 work proactively and in good faith with each of the Buyer's contractors

31.2.2 co-operate and share information with the Buyer's contractors to enable the efficient operation of the Buyer's ICT services and G-Cloud Services

## 32. Variation process

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

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

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

## 33. Data Protection Legislation (GDPR)

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

## Schedule 3: Collaboration agreement

This agreement is made on [enter date]

between:

- 1) [Buyer name] of [Buyer address] (the Buyer)
- 2) [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]
- 3) [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]
- 4) [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]
- 5) [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]
- 6) [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address] together (the Collaboration Suppliers and each of them a Collaboration Supplier).

Whereas the:

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

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

### 1. Definitions and interpretation

- 1.1 As used in this Agreement, the capitalised expressions will have the following meanings unless the context requires otherwise:
  - 1.1.1 “Agreement” means this collaboration agreement, containing the Clauses and Schedules
  - 1.1.2 “Call-Off Contract” means each contract that is let by the Buyer to one of the Collaboration Suppliers
  - 1.1.3 “Contractor’s Confidential Information” has the meaning set out in the Call-Off Contracts

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

## 1.2 General

- 1.2.1 As used in this Agreement the:
  - 1.2.1.1 masculine includes the feminine and the neuter
  - 1.2.1.2 singular includes the plural and the other way round
  - 1.2.1.3 A reference to any statute, enactment, order, regulation or other similar instrument will be viewed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment.
- 1.2.2 Headings are included in this Agreement for ease of reference only and will not affect the interpretation or construction of this Agreement.
- 1.2.3 References to Clauses and Schedules are, unless otherwise provided, references to clauses of and schedules to this Agreement.



- 1.2.4 Except as otherwise expressly provided in this Agreement, all remedies available to any party under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy will not exclude the exercise of any other remedy.
- 1.2.5 The party receiving the benefit of an indemnity under this Agreement will use its reasonable endeavours to mitigate its loss covered by the indemnity.

## 2. Term of the agreement

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

## 3. Provision of the collaboration plan

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

#### 4. Collaboration activities

- 4.1 The Collaboration Suppliers will perform the Collaboration Activities and all other obligations of this Agreement in accordance with the Detailed Collaboration Plan.
- 4.2 The Collaboration Suppliers will provide all additional cooperation and assistance as is reasonably required by the Buyer to ensure the continuous delivery of the services under the Call-Off Contract.
- 4.3 The Collaboration Suppliers will ensure that their respective subcontractors provide all cooperation and assistance as set out in the Detailed Collaboration Plan.

#### 5. Invoicing

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

#### 6. Confidentiality

- 6.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the Collaboration Suppliers acknowledge that any Confidential Information obtained from or relating to the Crown, its servants or agents is the property of the Crown.
- 6.2 Each Collaboration Supplier warrants that:
  - 6.2.1 any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) will only use Confidential Information for the purposes of this Agreement
  - 6.2.2 any person employed or engaged by it (in connection with this Agreement) will not disclose any Confidential Information to any third party without the prior written consent of the other party
  - 6.2.3 it will take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (except as agreed) or used other than for the purposes of this Agreement by its employees, servants, agents or subcontractors
  - 6.2.4 neither it nor any person engaged by it, whether as a servant or a consultant or otherwise, will use the Confidential Information for the solicitation of business from the other or from the other party's servants or consultants or otherwise
- 6.3 The provisions of clauses 6.1 and 6.2 will not apply to any information which is:

- 6.3.1 or becomes public knowledge other than by breach of this clause 6
- 6.3.2 in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party
- 6.3.3 received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure
- 6.3.4 independently developed without access to the Confidential Information
- 6.3.5 required to be disclosed by law or by any judicial, arbitral, regulatory or other authority of competent jurisdiction
- 6.4 The Buyer's right, obligations and liabilities in relation to using and disclosing any Collaboration Supplier's Confidential Information provided under this Agreement and the Collaboration Supplier's right, obligations and liabilities in relation to using and disclosing any of the Buyer's Confidential Information provided under this Agreement, will be as set out in the [relevant contract] [Call-Off Contract].

## 7. Warranties

- 7.1 Each Collaboration Supplier warrant and represent that:
  - 7.1.1 it has full capacity and authority and all necessary consents (including but not limited to, if its processes require, the consent of its parent company) to enter into and to perform this Agreement and that this Agreement is executed by an authorised representative of the Collaboration Supplier
  - 7.1.2 its obligations will be performed by appropriately experienced, qualified and trained personnel with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this clause 7) in accordance with its own established internal processes
- 7.2 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are excluded to the extent permitted by law.

## 8. Limitation of liability

- 8.1 None of the parties exclude or limit their liability for death or personal injury resulting from negligence, or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- 8.2 Nothing in this Agreement will exclude or limit the liability of any party for fraud or fraudulent misrepresentation.

- 8.3 Subject always to clauses 8.1 and 8.2, the liability of the Buyer to any Collaboration Suppliers for all claims (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than if made fraudulently), breach of statutory duty or otherwise under this Agreement (excluding Clause 6.4, which will be subject to the limitations of liability set out in the relevant Contract) will be limited to [REDACTED]
- 8.4 Subject always to clauses 8.1 and 8.2, the liability of each Collaboration Supplier for all claims (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than if made fraudulently), breach of statutory duty or otherwise under this Agreement will be limited to [Buyer to specify].
- 8.5 Subject always to clauses 8.1, 8.2 and 8.6 and except in respect of liability under clause 6 (excluding clause 6.4, which will be subject to the limitations of liability set out in the [relevant contract] [Call-Off Contract]), in no event will any party be liable to any other for:
- 8.5.1 indirect loss or damage
  - 8.5.2 special loss or damage
  - 8.5.3 consequential loss or damage
  - 8.5.4 loss of profits (whether direct or indirect)
  - 8.5.5 loss of turnover (whether direct or indirect)
  - 8.5.6 loss of business opportunities (whether direct or indirect)
  - 8.5.7 damage to goodwill (whether direct or indirect)
- 8.6 Subject always to clauses 8.1 and 8.2, the provisions of clause 8.5 will not be taken as limiting the right of the Buyer to among other things, recover as a direct loss any:
- 8.6.1 additional operational or administrative costs and expenses arising from a Collaboration Supplier's Default
  - 8.6.2 wasted expenditure or charges rendered unnecessary or incurred by the Buyer arising from a Collaboration Supplier's Default
9. Dispute resolution process
- 9.1 All disputes between any of the parties arising out of or relating to this Agreement will be referred, by any party involved in the dispute, to the representatives of the parties specified in the Detailed Collaboration Plan.
- 9.2 If the dispute cannot be resolved by the parties' representatives nominated under clause 9.1 within a maximum of 5 Working Days (or any other time agreed in writing by the parties) after it has been referred to them under clause 9.1, then except if a party seeks urgent injunctive relief, the parties will refer it to mediation under the process set out in clause 9.3 unless the Buyer considers (acting reasonably and considering any objections to mediation raised by the other parties) that the dispute is not suitable for resolution by mediation.
- 9.3 The process for mediation and consequential provisions for mediation are:
- 9.3.1 a neutral adviser or mediator will be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by

one party to the other parties to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, any party will within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to the parties that he is unable or unwilling to act, apply to the President of the Law Society to appoint a Mediator

- 9.3.2 the parties will within 10 Working Days of the appointment of the Mediator meet to agree a programme for the exchange of all relevant information and the structure of the negotiations
  - 9.3.3 unless otherwise agreed by the parties in writing, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the parties in any future proceedings
  - 9.3.4 if the parties reach agreement on the resolution of the dispute, the agreement will be put in writing and will be binding on the parties once it is signed by their authorised representatives
  - 9.3.5 failing agreement, any of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. The opinion will be provided on a without prejudice basis and will not be used in evidence in any proceedings relating to this Agreement without the prior written consent of all the parties
  - 9.3.6 if the parties fail to reach agreement in the structured negotiations within 20 Working Days of the Mediator being appointed, or any longer period the parties agree on, then any dispute or difference between them may be referred to the courts
- 9.4 The parties must continue to perform their respective obligations under this Agreement and under their respective Contracts pending the resolution of a dispute.

## 10. Termination and consequences of termination

### 10.1 Termination

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

## 10.2 Consequences of termination

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

## 11. General provisions

### 11.1 Force majeure

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

### 11.2 Assignment and subcontracting

- 11.2.1 Subject to clause 11.2.2, the Collaboration Suppliers will not assign, transfer, novate, sub-license or declare a trust in respect of its rights under all or a part of this Agreement or the benefit or advantage without the prior written consent of the Buyer.

11.2.2 Any subcontractors identified in the Detailed Collaboration Plan can perform those elements identified in the Detailed Collaboration Plan to be performed by the Sub-contractors.

### 11.3 Notices

11.3.1 Any notices given under or in relation to this Agreement will be deemed to have been properly delivered if sent by recorded or registered post or by fax and will be deemed for the purposes of this Agreement to have been given or made at the time the letter would, in the ordinary course of post, be delivered or at the time shown on the sender's fax transmission report.

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

### 11.4 Entire agreement

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

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

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

### 11.5 Rights of third parties

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

### 11.6 Severability

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

### 11.7 Variations

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

### 11.8 No waiver

The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law will not constitute a waiver of that right, power or remedy. If a party waives a breach of any provision of this Agreement this will not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.

### 11.9 Governing law and jurisdiction

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

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

#### **For and on behalf of the Buyer**

Signed by:

Full name (capitals):

Position:

Date:

#### **For and on behalf of the [Company name]**

Signed by:

Full name (capitals):

Position:

Date:

#### **For and on behalf of the [Company name]**

Signed by:

Full name (capitals):

Position:

Date:

#### **For and on behalf of the [Company name]**

Signed by:

Full name (capitals):



Position:

Date:

**For and on behalf of the [Company name]**

Signed by:

Full name (capitals):

Position:

Date:

**For and on behalf of the [Company name]**

Signed by:

Full name (capitals):

Position:

Date:

**For and on behalf of the [Company name]**

Signed by:

Full name (capitals):

Position:

Date:

#### Collaboration Agreement Schedule 1: List of contracts

Collaboration supplier	Name/reference of contract	Effective date of contract



Collaboration Agreement Schedule 2 **[Insert Outline Collaboration Plan]**

## Schedule 4: Alternative clauses

### 1. Introduction

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

### 2. Clauses selected

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

2.1.1 Scots Law and Jurisdiction

2.1.2 References to England and Wales in incorporated Framework Agreement clause 8.12 (Law and Jurisdiction) of this Call-Off Contract will be replaced with Scotland and the wording of the Framework Agreement and Call-Off Contract will be interpreted as closely as possible to the original English and Welsh Law intention despite Scots Law applying.

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

2.1.4 References to the Contracts (Rights of Third Parties) Act 1999 will be removed in clause 27.1. Reference to the Freedom of Information Act 2000 within the defined terms for 'FoIA/Freedom of Information Act' to be replaced with Freedom of Information (Scotland) Act 2002.

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

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

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

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

### 2.3 Discrimination

2.3.1 The Supplier will comply with all applicable fair employment, equality of treatment and anti-discrimination legislation, including, in particular the:

- Employment (Northern Ireland) Order 2002
- Fair Employment and Treatment (Northern Ireland) Order 1998
- Sex Discrimination (Northern Ireland) Order 1976 and 1988
- Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003

- Equal Pay Act (Northern Ireland) 1970
- Disability Discrimination Act 1995
- Race Relations (Northern Ireland) Order 1997
- Employment Relations (Northern Ireland) Order 1999 and Employment Rights (Northern Ireland) Order 1996
- Employment Equality (Age) Regulations (Northern Ireland) 2006
- Part-time Workers (Prevention of less Favourable Treatment) Regulation 2000
- Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002
- The Disability Discrimination (Northern Ireland) Order 2006
- The Employment Relations (Northern Ireland) Order 2004
- Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006
- Employment Relations (Northern Ireland) Order 2004
- Work and Families (Northern Ireland) Order 2006

and will use his best endeavours to ensure that in his employment policies and practices and in the delivery of the services required of the Supplier under this Call-Off Contract he promotes equality of treatment and opportunity between:

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

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

## 2.4 Equality policies and practices

2.4.1 The Supplier will introduce and will procure that any Subcontractor will also introduce and implement an equal opportunities policy in accordance with guidance from and to the satisfaction of the Equality Commission. The Supplier will review these policies on a regular basis (and will procure that its Subcontractors do likewise) and the Customer will be entitled to receive upon request a copy of the policy.

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

- a. the issue of written instructions to staff and other relevant persons
- b. the appointment or designation of a senior manager with responsibility for equal opportunities

- c. training of all staff and other relevant persons in equal opportunities and harassment matters
- d. the inclusion of the topic of equality as an agenda item at team, management and staff meetings

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

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

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

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

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

2.4.5 The Supplier will provide any information the Customer requests (including Information requested to be provided by any Subcontractors) for the purpose of assessing the Supplier's compliance with its obligations under clauses 2.4.1 to 2.4.5 of this Schedule.

## 2.5 Equality

2.5.1 The Supplier will, and will procure that each Subcontractor will, in performing its/their obligations under this Call-Off Contract (and other relevant agreements), comply with the provisions of Section 75 of the Northern Ireland Act 1998, as if they were a public authority within the meaning of that section.

2.5.2 The Supplier acknowledges that the Customer must, in carrying out its functions, have due regard to the need to promote equality of opportunity as contemplated by the Northern Ireland Act 1998 and the Supplier will use all reasonable endeavours to assist (and to ensure that relevant Subcontractor helps) the Customer in relation to same.

## 2.6 Health and safety

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

## 2.7 Criminal damage

- 2.7.1 The Supplier will maintain standards of vigilance and will take all precautions as advised by the Criminal Damage (Compensation) (Northern Ireland) Order 1977 or as may be recommended by the police or the Northern Ireland Office (or, if replaced, their successors) and will compensate the Customer for any loss arising directly from a breach of this obligation (including any diminution of monies received by the Customer under any insurance policy).
- 2.7.2 If during the Call-Off Contract Period any assets (or any part thereof) is or are damaged or destroyed by any circumstance giving rise to a claim for compensation under the provisions of the Compensation Order the following provisions of this clause 2.7 will apply.
- 2.7.3 The Supplier will make (or will procure that the appropriate organisation make) all appropriate claims under the Compensation Order as soon as possible after the CDO Event and will pursue any claim diligently and at its cost. If appropriate, the Customer will also make and pursue a claim diligently under the Compensation Order. Any appeal against a refusal to meet any claim or against the amount of the

award will be at the Customer's cost and the Supplier will (at no additional cost to the Customer) provide any help the Customer reasonably requires with the appeal.

- 2.7.4 The Supplier will apply any compensation paid under the Compensation Order in respect of damage to the relevant assets towards the repair, reinstatement or replacement of the assets affected.



## Schedule 5: Guarantee

[A Guarantee should only be requested if the Supplier's financial standing is not enough on its own to guarantee delivery of the Services. This is a draft form of guarantee which can be used to procure a Call Off Guarantee, and so it will need to be amended to reflect the Beneficiary's requirements]

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

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

and

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

### Whereas:

- (A) The guarantor has agreed, in consideration of the Buyer entering into the Call-Off Contract with the Supplier, to guarantee all of the Supplier's obligations under the Call-Off Contract.
- (B) It is the intention of the Parties that this document be executed and take effect as a deed.

[Where a deed of guarantee is required, include the wording below and populate the box below with the guarantor company's details. If a deed of guarantee isn't needed then the section below and other references to the guarantee should be deleted.]

Suggested headings are as follows:

- Demands and notices
- Representations and Warranties
- Obligation to enter into a new Contract
- Assignment
- Third Party Rights
- Governing Law
- This Call-Off Contract is conditional upon the provision of a Guarantee to the Buyer from the guarantor in respect of the Supplier.]

<b>Guarantor company</b>	[Enter Company name] 'Guarantor'
<b>Guarantor company address</b>	[Enter Company address]
<b>Account manager</b>	[Enter Account Manager name]
	Address: [Enter Account Manager address]
	Phone: [Enter Account Manager phone number]
	Email: [Enter Account Manager email]
	Fax: [Enter Account Manager fax if applicable]

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

### Definitions and interpretation

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

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

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

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

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

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

Unless the context otherwise requires:

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

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

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

## Guarantee and indemnity

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

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

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

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

## Obligation to enter into a new contract

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

## Demands and notices

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

**[Enter Address of the Guarantor in England and Wales]**

**[Enter Email address of the Guarantor representative]**

For the Attention of **[insert details]**

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

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

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

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

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

#### Beneficiary's protections

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

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

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

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

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

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

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

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

The Buyer's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by Law. The Buyer's rights may be exercised as often as the Buyer deems expedient. Any waiver by the Buyer of any terms of this Deed of Guarantee, or of any Guaranteed Obligations, will only be effective if given in writing and then only for the purpose and upon the terms and conditions on which it is given.

Any release, discharge or settlement between the Guarantor and the Buyer will be conditional upon no security, disposition or payment to the Buyer by the Guarantor or any other person being void, set aside or ordered to be refunded following any enactment or Law relating to liquidation, administration or insolvency or for any other reason. If such condition will not be fulfilled, the Buyer will be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Buyer will be entitled to retain this security before and after the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Buyer from the Guarantor for such period as the Buyer may determine.

## Representations and warranties

The Guarantor hereby represents and warrants to the Buyer that:

- the Guarantor is duly incorporated and is a validly existing company under the Laws of its place of incorporation
- has the capacity to sue or be sued in its own name
- the Guarantor has power to carry on its business as now being conducted and to own its Property and other assets
- the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee
- the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including entry into and performance of a Call-Off Contract following Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:

- the Guarantor's memorandum and articles of association or other equivalent constitutional documents, any existing Law, statute, rule or Regulation or any judgment, decree or permit to which the Guarantor is subject
- the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets
- all governmental and other authorisations, approvals, licences and consents, required or desirable

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

## Payments and set-off

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

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

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

## Guarantor's acknowledgement

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

## Assignment

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

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

## Severance

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

## Third-party rights

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

## Governing law

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

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

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

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

[The Guarantor hereby irrevocably designates, appoints and empowers **[enter the Supplier name]** [or a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on fax number **[insert fax number]** from time to time to act as its authorised agent to receive notices, demands, Service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Buyer in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the Service of notices and demands, Service of process or any other legal summons served in such way.]

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

EXECUTED as a DEED by

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



Director

Director/Secretary

## Schedule 6: Glossary and interpretations

In this Call-Off Contract the following expressions mean:

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

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

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

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

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

<b>Implementation Plan</b>	The plan with an outline of processes (including data standards for migration), costs (for example) of implementing the services which may be required as part of Onboarding.
<b>Indicative test</b>	ESI tool completed by contractors on their own behalf at the request of CCS or the Buyer (as applicable) under clause 4.6.
<b>Information</b>	Has the meaning given under section 84 of the Freedom of Information Act 2000.
<b>Information security management system</b>	The information security management system and process developed by the Supplier in accordance with clause 16.1.
<b>Inside IR35</b>	Contractual engagements which would be determined to be within the scope of the IR35 Intermediaries legislation if assessed using the ESI tool.
<b>Insolvency event</b>	<p>Can be:</p> <ul style="list-style-type: none"> <li>• a voluntary arrangement</li> <li>• a winding-up petition</li> <li>• the appointment of a receiver or administrator</li> <li>• an unresolved statutory demand</li> <li>• a Schedule A1 moratorium</li> </ul>
<b>Intellectual Property Rights or IPR</b>	<p>Intellectual Property Rights are:</p> <ul style="list-style-type: none"> <li>• copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semiconductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information</li> <li>• applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction</li> <li>• all other rights having equivalent or similar effect in any country or jurisdiction</li> </ul>
<b>Intermediary</b>	<p>For the purposes of the IR35 rules an intermediary can be:</p> <ul style="list-style-type: none"> <li>• the supplier's own limited company</li> <li>• a service or a personal service company</li> <li>• a partnership</li> </ul> <p>It does not apply if you work for a client through a Managed Service Company (MSC) or agency (for example, an employment agency).</p>

<b>IPR claim</b>	As set out in clause 11.5.
<b>IR35</b>	IR35 is also known as 'Intermediaries legislation'. It's a set of rules that affect tax and National Insurance where a Supplier is contracted to work for a client through an Intermediary.
<b>IR35 assessment</b>	Assessment of employment status using the ESI tool to determine if engagement is Inside or Outside IR35.
<b>Know-How</b>	All ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the G-Cloud Services but excluding know-how already in the Supplier's or CCS's possession before the Start date.
<b>Law</b>	Any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply.
<b>LED</b>	Law Enforcement Directive (EU) 2016/680.
<b>Loss</b>	All losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and ' <b>Losses</b> ' will be interpreted accordingly.
<b>Lot</b>	Any of the 3 Lots specified in the ITT and Lots will be construed accordingly.
<b>Malicious Software</b>	Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
<b>Management Charge</b>	The sum paid by the Supplier to CCS being an amount of up to 1% but currently set at 0.75% of all Charges for the Services invoiced to Buyers (net of VAT) in each month throughout the duration of the Framework Agreement and thereafter, until the expiry or End of any Call-Off Contract.



<b>Management Information</b>	The management information specified in Framework Agreement section 6 (What you report to CCS).
<b>Material Breach</b>	Those breaches which have been expressly set out as a Material Breach and any other single serious breach or persistent failure to perform as required under this Call-Off Contract.
<b>Ministry of Justice Code</b>	The Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000.
<b>New Fair Deal</b>	The revised Fair Deal position in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 as amended.
<b>Order</b>	An order for G-Cloud Services placed by a contracting body with the Supplier in accordance with the ordering processes.
<b>Order Form</b>	The order form set out in Part A of the Call-Off Contract to be used by a Buyer to order G-Cloud Services.
<b>Ordered G-Cloud Services</b>	G-Cloud Services which are the subject of an order by the Buyer.
<b>Outside IR35</b>	Contractual engagements which would be determined to not be within the scope of the IR35 intermediaries legislation if assessed using the ESI tool.
<b>Party</b>	The Buyer or the Supplier and 'Parties' will be interpreted accordingly.
<b>Personal Data</b>	Takes the meaning given in the GDPR.
<b>Personal Data Breach</b>	Takes the meaning given in the GDPR.
<b>Processing</b>	Takes the meaning given in the GDPR.
<b>Processor</b>	Takes the meaning given in the GDPR.

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

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

<b>Subcontractor</b>	Any third party engaged by the Supplier under a subcontract (permitted under the Framework Agreement and the Call-Off Contract) and its servants or agents in connection with the provision of G-Cloud Services.
<b>Subprocessor</b>	Any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract.
<b>Supplier</b>	The person, firm or company identified in the Order Form.
<b>Supplier Representative</b>	The representative appointed by the Supplier from time to time in relation to the Call-Off Contract.
<b>Supplier staff</b>	All persons employed by the Supplier together with the Supplier's servants, agents, suppliers and subcontractors used in the performance of its obligations under this Call-Off Contract.
<b>Supplier terms</b>	The relevant G-Cloud Service terms and conditions as set out in the Terms and Conditions document supplied as part of the Supplier's Application.
<b>Term</b>	The term of this Call-Off Contract as set out in the Order Form.
<b>Variation</b>	This has the meaning given to it in clause 32 (Variation process).
<b>Working Days</b>	Any day other than a Saturday, Sunday or public holiday in England and Wales.
<b>Year</b>	A contract year.

## Schedule 7: GDPR Information

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

### Annex 1: Processing Personal Data

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

- 1.1 The contact details of the Buyer's Data Protection Officer are: **[Insert Contact details]**
- 1.2 The contact details of the Supplier's Data Protection Officer are: **[Insert Contact details]**
- 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Annex.

Descriptions	Details
Identity of Controller for each Category of Personal Data	<p><b>The Buyer is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with paragraph 2-15 Framework Agreement Schedule 4 (Where the Party is a Controller and the other Party is Processor) and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"><li>• <b>[Insert the scope of Personal Data for which the purposes and means of the Processing by the Supplier is determined by the Buyer]</b></li></ul> <p><b>The Supplier is Controller and the Buyer is Processor</b></p> <p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Buyer is the Processor in accordance with paragraph 2 to paragraph 15 of the following Personal Data:</p> <ul style="list-style-type: none"><li>• <b>[Insert the scope of Personal Data which the purposes and means of the Processing by the Buyer is determined by the Supplier]</b></li></ul> <p><b>The Parties are Joint Controllers</b></p>

	<p>The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <p><b>[Insert the scope of Personal Data which the purposes and means of the Processing is determined by the both Parties together]</b></p> <p><b>The Parties are Independent Controllers of Personal Data</b></p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> <li>• Business contact details of Supplier Personnel for which the Supplier is the Controller</li> <li>• Business contact details of any directors, officers, employees, agents, consultants and contractors of Buyer (excluding the Supplier Personnel) engaged in the performance of the Buyer's duties under the Contract) for which the Buyer is the Controller</li> <li>• <b>[Insert the scope of other Personal Data provided by one Party who is Controller to the other Party who will separately determine the nature and purposes of its Processing the Personal Data on receipt e.g. where (1) the Supplier has professional or regulatory obligations in respect of Personal Data received, (2) a standardised service is such that the Buyer cannot dictate the way in which Personal Data is processed by the Supplier, or (3) where the Supplier comes to the transaction with Personal Data for which it is already Controller for use by the Buyer]</b></li> </ul> <p><b>[Guidance where multiple relationships have been identified above, please address the below rows in the table for in respect of each relationship identified]</b></p>
Subject matter of the Processing	<p><b>[Guidance: This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.]</b></p> <p><b>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public. ]</b></p>

Duration of the Processing	<b>[Clearly set out the duration of the Processing including dates]</b>
Nature and purposes of the Processing	<p><b>[Please be as specific as possible, but make sure that you cover all intended purposes.]</b></p> <p>The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment Processing, statutory obligation, recruitment assessment etc]</p>
Type of Personal Data	<b>[Enter type of Personal Data.</b> Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]
Categories of Data Subject	<b>[Enter categories.</b> Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under Union or Member State law to preserve that type of data	<b>[Describe how long the data will be retained for, how it be returned or destroyed]</b>

## Annex 2: Joint Controller Agreement

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

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of paragraphs 2 to 15 of Schedule 4 of the Framework Agreement (Where one Party is Controller and the other Party is Processor) and paragraphs 17-27 of Schedule 4 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.
- 1.2 The Parties agree that the **[delete as appropriate Supplier/Buyer]**:
- (a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;
  - (b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
  - (c) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;
  - (d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
  - (e) shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the **[Supplier's/Buyer's]** privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 1.3 Notwithstanding the terms of clause 1.2, the Parties acknowledge that a data subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

### 2. Undertakings of both Parties

- 2.1 The Supplier and the Buyer each undertake that they shall:
- (a) report to the other Party every **[enter number]** months on:



- (i) the volume of Data Subject Request (or purported Data Subject Requests) from Data Subjects (or third parties on their behalf);
  - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
  - (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
  - (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
  - (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law, that it has received in relation to the subject matter of the Contract during that period;
- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1(a)(i) to (v);
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- (d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
- (e) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
- (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
- (g) take all reasonable steps to ensure the reliability and integrity of any of its personnel who have access to the Personal Data and ensure that its personnel:
- (i) are aware of and comply with their 's duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information

- (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
  - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data as required by the applicable Data Protection Legislation;
- (h) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and
  - (i) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.

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

### 3. Data Protection Breach

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

- (a) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;
- (b) all reasonable assistance, including:
  - (i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;

- (ii) co-operation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;
- (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;
- and/or
- (iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 3.2.

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

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

#### 4. Audit

4.1 The Supplier shall permit:

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

Supplier so far as relevant to the contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

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

## 5. Impact Assessments

### 5.1 The Parties shall:

- (a) provide all reasonable assistance to the each other to prepare any data protection impact assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and
- (b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the contract, in accordance with the terms of Article 30 GDPR.

## 6. ICO Guidance

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

## 7. Liabilities for Data Protection Breach

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

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

(b) if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request

and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or

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

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

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

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

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

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

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

8. Not used

9. Termination

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

10. Sub-Processing

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

(a) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the contract,

and provide evidence of such due diligence to the other Party where reasonably requested; and

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

## 11. Data Retention

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