



G-Cloud 13 Call-Off Contract

This Call-Off Contract for the G-Cloud 13 Framework Agreement (RM1557.13) includes:

G-Cloud 13 Call-Off Contract.....	1
Part A: Order Form	2
Part B: Terms and conditions.....	28
Schedule 1 – Services	52
Schedule 2: Call-Off Contract charges	54
Schedule 3: Collaboration agreement (NOT USED).....	55
Schedule 4: Alternative clauses (NOT USED).....	55
Schedule 5: Guarantee (NOT USED)	55
Schedule 6: Glossary and interpretations	56
Schedule 7: UK GDPR Information.....	76
Annex 1: Processing Personal Data	76
Annex 2: Joint Controller Agreement (NOT USED)	77
Part C: COTS Third Party Software Licensing Terms.....	Error! Bookmark not defined.

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.

Digital Marketplace Platform service ID number	
Call-Off Contract reference	C201818
Call-Off Contract title	Click Dimensions Brightwire
Call-Off Contract description	<ul style="list-style-type: none">Click Dimensions, emails per year, inc. nonproduction environment.Support (based on anticipated 2 days per quarter)
Start date	15 November 2023
Expiry date	14 November 2024
Call-Off Contract value	<p>£45,900 (Excluding VAT)</p> <p>This value applies for Services to be provided up to the Expiry Date and thereafter may be increased at the sole discretion of the Buyer as appropriate for any extension period.</p> <p>NB: PO will be raised annually.</p>
Charging method	Annual invoices in advance, payment via BACS.

Purchase order number	TBC
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This Order Form is issued under the G-Cloud 13 Framework Agreement (RM1557.13).

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 Services offered by the Supplier and defined in the Application.

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

From the Buyer	<div>NHS England</div> <div>Buyer's main address:</div> <div>7 - 8 Wellington Place</div> <div>Leeds</div> <div>West Yorkshire</div> <div>LS1 4AP</div>
To the Supplier	<div>Suppliers Details</div> <div>BRIGHTWIRE TECHNOLOGY SERVICES LIMITED</div> <div>5 High Street</div> <div>Peebles</div> <div>EH45 8AG</div> <div>Company number: SC301621</div>
Together the 'Parties'	

Principal contact details

For the Buyer:

[REDACTED]

[REDACTED]

[REDACTED]

For the Supplier:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Call-Off Contract term

Start date	<p>This Call-Off Contract Starts on 15th November 2023 and is valid for an initial 12 months.</p> <p>The date and number of days or months is subject to clause 1.2 in Part B below.</p>
Ending (termination)	<p>The notice period for the Supplier needed for Ending the Call-Off Contract is at least 90 Working Days from the date of written notice for undisputed sums (as per clause 18.6).</p> <p>The notice period for the Buyer is a maximum of 30 days from the date of written notice for Ending without cause (as per clause 18.1).</p>

Extension period

This Call-Off Contract can be extended by the Buyer for **one** period of up to **12 months**, by giving the Supplier 30 days written notice before its expiry. The extension period is subject to clauses 1.3 and 1.4 in Part B below.

Extensions which extend the Term beyond 36 months are only permitted if the Supplier complies with the additional exit plan requirements at clauses 21.3 to 21.8.

If a buyer is a central government department and the contract Term is intended to exceed 24 months, then under the Spend Controls process, prior approval must be obtained from the Government Digital Service (GDS). Further guidance:

<https://www.gov.uk/service-manual/agile-delivery/spend-controls-check-if-you-need-approval-to-spend-money-on-a-service>

As part of any extension, the Parties may amend, by way of variation, the pricing and charging method agreed as part of this Call-Off Contract in order to benefit from any savings the Supplier may provide.

The Parties acknowledge and agree that the Call-Off Contract shall not automatically renew. The Supplier shall invite the Buyer to renew the Click Dimensions licence 120 days before the licence renewal date, this being the same as the Call Off contract expiry date. The Buyer will decide no less than 90 days in advance of the expiry date whether the Click Dimensions licence shall be renewed for a further term.

Buyer contractual details

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

G-Cloud Lot	<p>This Call-Off Contract is for the provision of Services Under:</p> <ul style="list-style-type: none">• Lot 2: Cloud software
G-Cloud Services required	<p>The Services to be provided by the Supplier under the above Lot are listed in Framework Schedule 4 and outlined below.</p> <ul style="list-style-type: none">• Click Dimensions, [REDACTED] emails per year, inc. nonproduction environment.• Support (based on anticipated 2 days per quarter)
Additional Services	Ad hoc services as requested.
Location	The Services will be delivered remotely by the Supplier however the Supplier shall comply with reasonable requests by the Buyer to co-locate where practical to facilitate integration of the Services between the Parties.
Quality Standards	The quality standards required for this Call-Off Contract are as per the Part B G-Cloud terms and conditions.
Technical Standards:	The technical standards used as a requirement for this Call-Off Contract are as per the Part B G-Cloud terms and conditions.

Service level agreement:	The service level and availability criteria required for this Call-Off Contract are fully described in the Supplier's G-Cloud 13 Service Definition.
Onboarding	The onboarding plan for this Call-Off Contract is to be agreed following kick off with the implementation consultant
Offboarding	The offboarding plan for this Call-Off Contract is not applicable
Collaboration agreement	Not Applicable
Limit on Parties' liability	<p>Defaults by either party resulting in direct loss to the property (including technical infrastructure, assets or equipment but excluding any loss or damage to Buyer Data) of the other Party will not exceed 125% of the Charges payable by the Buyer to the Supplier, per year.</p> <p>Data defaults are not applicable to this Call-Off Contract. Data will be solely held in the NHS Dynamics365 environment and this will be subject to the cloud agreement and clauses concerning data assurance provision between Microsoft and NHS England.</p> <p>The annual total liability of the Supplier for all other Defaults will not exceed 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term.</p>
Insurance	The Supplier insurance(s) required will be:

	<ul style="list-style-type: none"> • a minimum insurance period of 6 years following the expiration or Ending of this Call-Off Contract • professional indemnity insurance cover to be held by the Supplier and by any agent, Subcontractor or consultant involved in the supply of the G-Cloud Services. This professional indemnity insurance cover will have a minimum limit of indemnity of £1,000,000 for each individual claim or any higher limit the Buyer requires (and as required by Law) • employers' liability insurance with a minimum limit of £5,000,000 or any higher minimum limit required by Law
Buyer's responsibilities	<p>The Buyer is responsible for:</p> <ul style="list-style-type: none"> - all suitable information required for the Supplier to deliver the Call-Off Contract - providing access to all relevant systems.
Buyer's equipment	None

Supplier's information

Subcontractors or partners	N/A
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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.

Payment method	The payment method for this Call-Off Contract is BACS transfer.
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Payment profile	<p>The Supplier will issue electronic invoices as per Schedule 2. The Buyer will pay the Supplier within 30 days of receipt of a valid invoice. The payment profile for this Call-Off Contract is annually in advance.</p>
Invoice details	<p>The Supplier will issue electronic invoices monthly. The Buyer will pay the Supplier within 30 days of receipt of a valid undisputed invoice which includes a valid Purchase Order Number. The Buyer may, without prejudice to any other rights and remedies under this Call-Off Contract withhold or reduce payments in the event of unsatisfactory performance.</p> <p>All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Buyer shall, following the Receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.</p>
Who and where to send invoices to	<p>Invoices should clearly quote the purchase order number, be addressed to:</p> <p>NHS ENGLAND X24 PAYABLES K005 PO BOX 312 LEEDS LS11 1HP</p> <p>and be sent as a PDF attachment by email to the following email address: sbs.apinvoicing@nhs.net (one invoice per PDF) and emails must not exceed 10Mb and quote, 'X24 Invoice Scanning' in subject line or alternatively invoices can be sent via post to the above address.</p> <p>Any queries regarding outstanding payments should be directed to NHS England's Accounts Payable section by email at financialaccounts@nhs.net</p>

Invoice information required	<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>
Invoice frequency	<p>Invoice will be sent to the Buyer annually in advance.</p>
Call-Off Contract value	<p>The total value of this Call-Off Contract is £45,900.00 (exclusive of VAT)</p> <p>This value applies for Services to be provided up to the Expiry Date and thereafter may be increased at the sole discretion of the Buyer as appropriate for any extension period.</p>
Call-Off Contract charges	<p>The breakdown of the Charges is set out in Order Form Schedule 2 (Call-Off Contract charges).</p>

	Expenses are not paid as part of this Call-Off Contract.
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Additional Buyer terms

Performance of the Service	<p>This Call-Off Contract will include the following Implementation Plan, exit and offboarding plans and milestones:</p> <ul style="list-style-type: none">• as set out in Order Form Schedule 1
Guarantee	Not applicable
Warranties, representations	<p>In addition to the incorporated Framework Agreement clause 2.3, the Supplier will comply with the warranties and representations set out in the Buyer specific amendments to/refinements of the Call-Off Contract terms.</p> <p>The Supplier warrants that the Services will be provided in conformity with and meet all requirements and standards set out in this Call-Off Contract.</p>

Supplemental requirements in addition to the Call-Off terms

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:
 - 1.1 The Buyer shall be entitled, free of charge, to sub licence the software to any contractor and/or Subcontractor of the Buyer who is working towards and/or is providing services to the Buyer.
 - 1.2 The Buyer's role as national information and technology partner to the NHS and social care bodies 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 its role as the national information and technology partner for the health and care system which includes the ability of the Buyer to offer software and services to the NHS and social care entities. Specifically, any software licensing clause prohibiting 'white labelling', 'provision of outsourcing services' or similar, shall not be interpreted as prohibiting the Buyer's services.
 - 1.3 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.
 - 1.4 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

	<p>named user who is a contractor and/or Subcontractor of the Buyer).</p> <p>1.5 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>1.6 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>1.7 Where the Buyer exceeds the number of credits used in the Click Dimensions software, the Buyer shall be responsible for purchasing additional credits from the Supplier.</p> <p>1.8 The Click Dimensions software licence key (and associated email sending credits) is applied to a single Dynamics 365 instance within the Buyer's environment and cannot be transferred.</p>
Alternative clauses	Not applicable
Buyer specific amendments to/refinements of the Call-Off Contract terms	<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>

Central Government Body: 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:

- a) Government Department;
- b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- c) Non-Ministerial Department; and
- d) Executive Agency.

Click Dimensions Licence means the COTS third party licence terms as set out at Part C to this Call-Off Contract;

Cyber Security Requirements means:

- a) compliance with the DSP Toolkit or any replacement of the same; and
- b) any other cyber security requirements relating to the Services notified to the Supplier by the Buyer from time to time;

DSP Toolkit 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 <https://www.dsptoolkit.nhs.uk/>, as may be amended or replaced by the Buyer or the Department of Health and Social Care from time to time;

Project Specific IPRs means 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 or Third Party IPRs;

Purchase Order means the Buyer's unique number relating to the supply of the Services;

Receipt 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;

Third Party IPRs means any intellectual property rights owned by a third party, which are licensed by the Supplier for the purposes of providing the Services;

Unavoidable Losses 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) New Clauses 11.10 to 11.14 inclusive, shall be added to Clause 11 of the Call-Off terms, as follows:

11.10 All Project Specific IPRs shall vest in the Buyer absolutely, and the Supplier hereby assigns to the Buyer, absolutely with full title guarantee (and free from all third party rights), any and all of its right, title and interest in and to all the existing and future Project Specific IPRs, to the

	<p>fullest extent permitted by law.</p> <p>11.11 The Supplier grants the Buyer a non-exclusive, transferable, perpetual, irrevocable, royalty-free licence to use any Supplier Background IPRs embedded within the Project Specific IPRs for the Buyer's ordinary business activities and to the extent required to enjoy the full benefit of ownership of the Project Specific IPRs.</p> <p>11.12 The Buyer shall have the right to grant to any person a sub-licence of any licence granted pursuant to Clauses 11.11 and 11.4.</p> <p>11.13 Each Party undertakes that it shall promptly execute all documents, make all applications, give all assistance and do or procure the doing of all acts and things as may be necessary or desirable to give full effect to the assignment of the Project Specific IPRs described in Clause 11.10 in, and to register ownership of the Project Specific IPRs in, the name of the Buyer (to the extent that registration of rights is available) and/or to give full effect to the licences granted under this Clause 11.</p> <p>11.14 The licence granted by the Supplier under Clause 11.4 shall be transferable to other Central Government Bodies.</p> <p>2) 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>18.2 The Parties agree that the:</p> <ul style="list-style-type: none"> • Buyer's right to End the Call-Off Contract under clause 18.1 is reasonable considering the type of cloud Service being provided
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	<ul style="list-style-type: none"> • Call-Off Contract Charges paid during the notice period are reasonable compensation and cover 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.
	<p>18.3 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>3) New Clauses 4A and 4B shall be added as follows:</p>
	<p>4A IR35</p>
	<p>4A.1 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"> • any proceedings, claims or demands

	<p>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);</p> <ul style="list-style-type: none"> • 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 • all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Buyer in connection with or in consequence of any such liability, deduction, contribution, assessment or claim. <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</p>
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impact the Suppliers' (or its Subcontractors) IR35 Assessment in relation to the Contractors.

4B Security of Supplier Staff

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:

(<https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>), as may be amended or replaced by the Government from time to time.

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.

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.

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>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>4) 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 throughout the Call Off Contract Period will continue to comply with the Cyber Security Requirements.</p> <p>5) 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 and 12.3:</p> <p>12.1 The Supplier must:</p> <ul style="list-style-type: none"> • 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; • only Process the Buyer Data, including but not limited to Buyer Personal Data as necessary for the provision of the G-Cloud Services or as required by Law or any Regulatory Body; • take reasonable steps to ensure that any Supplier Staff who have access to any Buyer Data, including but not limited to Buyer Personal Data act in compliance with Supplier's security processes. <p>12.3 The Supplier must get prior written consent from the Buyer to transfer any Buyer Data, including but not limited to Buyer Personal</p>
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	<p>Data to any other person including any Sub-contractors) for the provision of the Services.</p> <p>12.7 Neither Party shall do nor omit to do anything that will put the other Party in breach of the Data Protection Legislation.</p> <p>6) A new clause 7.2A shall be added to the Call-Off terms and conditions as follows:</p> <p>7.2A Electronic Invoicing</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 clause 7.2A.1, 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>7) New Clause 33.2 shall be added as follows:</p> <p>Data Protection Impact Assessment Delivery and Assistance</p> <p>33.2 Without limitation to the obligations as set out in Schedule 7 (UK GDPR Information), the Call-Off Contract and the Order Form, the Supplier shall participate and provide reasonable co-operation for the completion of any Data Protection Impact Assessments conducted by the Buyer relating to the Services and the deliverables. Such participation and co-operation shall include updating the Data Protection Impact Assessment at each</p>
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	<p>material change of the deliverable(s) (including but not limited to each release of new software) and following any Variation.</p> <p>8) A new Clause 34 shall be added as follows:</p> <p>34 Assignment and Novation</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 the Department of Health and Social Care, and / or any Central Government Body 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>9) A new Clause 35 shall be added as follows:</p> <p>35 Subcontracts</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; and</p> <p>35.3 obligations no less onerous on the Subcontractor than those imposed on the Supplier under this Call-Off Contract.</p> <p>10) A new Clause 36 shall be added as follows:</p>
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	<p>36 Execution and Counterparts</p> <p>36.1 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>36.2 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>11) A new clause 37 shall be added as follows:</p> <p style="padding-left: 40px;">37 Offshore Working</p> <p style="padding-left: 40px;">The Supplier is not permitted to use Supplier Staff outside of the UK to provide the Services.</p> <p>12) Schedule 7 - Processing Data (Framework Agreement)</p>
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	<p>12.1) For the purposes of incorporating Schedule 4 of the Framework Agreement into this Call-Off Contract, paragraph 5(d) shall be deleted in its entirety and replaced with the following:</p> <p>(d) not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:</p> <p>(i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;</p> <p>(ii) the Data Subject has enforceable rights and effective legal remedies;</p> <p>(iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and</p> <p>(iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data.</p> <p>12.2) The reference to paragraph 16 in paragraph 28 of Schedule 7 of the Framework Agreement shall</p>
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	<p>be deleted and replaced with a reference to paragraph 17.</p> <p>12.3) 18) An extra row shall be added at the end of the table at Annex 1 of Schedule 7 (GDPR Information) as follows:</p> <table> <tr> <td>Jurisdiction of processing</td><td>UK</td></tr> </table>	Jurisdiction of processing	UK
Jurisdiction of processing	UK		
Personal Data and Data Subjects	<p>Confirm whether Annex 1 (and Annex 2, if applicable) of Schedule 7 is being used:</p> <p>Annex 1</p>		
Intellectual Property	Not Applicable		
Social Value	Not Applicable		

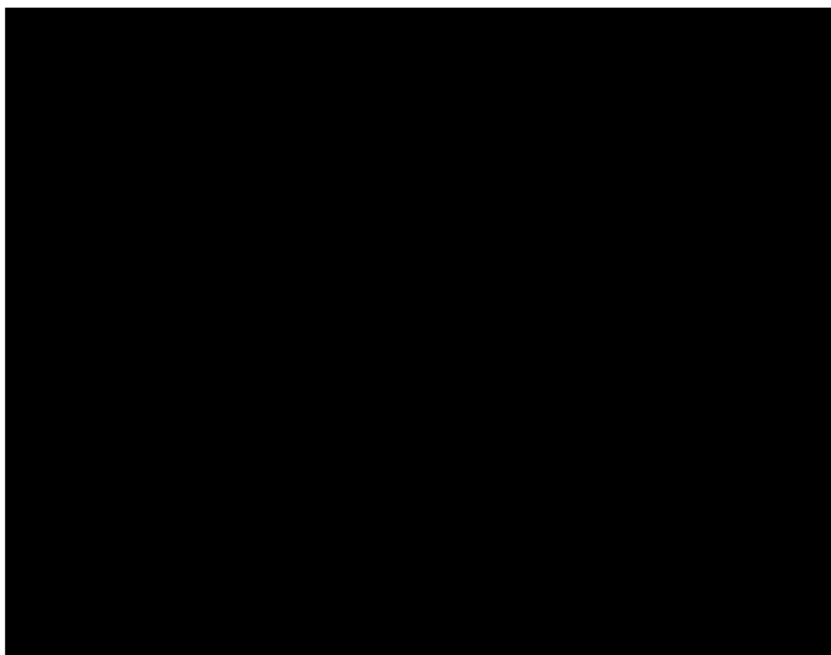
1. Formation of contract

- 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 RM1557.13.

2.2. 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:





Customer Benefits

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

[G-Cloud 13 Customer Benefit 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 36 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 1 period of up to 12 months.
 - 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 set the Term at more than 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:

- 2.3 (Warranties and representations)
- 4.1 to 4.6 (Liability)
- 4.10 to 4.11 (IR35)
- 10 (Force majeure)
- 5.3 (Continuing rights)
- 5.4 to 5.6 (Change of control)
- 5.7 (Fraud)
- 5.8 (Notice of fraud)
- 7 (Transparency and Audit)
- 8.3 (Order of precedence)
- 11 (Relationship)
- 14 (Entire agreement)
- 15 (Law and jurisdiction)
- 16 (Legislative change)
- 17 (Bribery and corruption)
- 18 (Freedom of Information Act)
- 19 (Promoting tax compliance)
- 20 (Official Secrets Act)
- 21 (Transfer and subcontracting)
- 23 (Complaints handling and resolution)
- 24 (Conflicts of interest and ethical walls)

- 25 (Publicity and branding)
- 26 (Equality and diversity)
- 28 (Data protection)
- 31 (Severability)
- 32 and 33 (Managing disputes and Mediation)
- 34 (Confidentiality)
- 35 (Waiver and cumulative remedies)
- 36 (Corporate Social Responsibility)
- paragraphs 1 to 10 of the Framework Agreement Schedule 3

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' or to 'CCS and/or the Buyer' 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 7 (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 14digit 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 their own due diligence

6. Business continuity and disaster recovery

6.1 The Supplier will have a clear business continuity and disaster recovery plan in their Service Descriptions.

6.2 The Supplier's business continuity and disaster recovery services are part of the Services and will be performed by the Supplier when required.

6.3 If requested by the Buyer prior to entering into this Call-Off Contract, the Supplier must ensure that its business continuity and disaster recovery plan is consistent with the Buyer's own plans.

7. Payment, VAT and Call-Off Contract charges

7.1 The Buyer must pay the Charges following clauses 7.2 to 7.11 for the Supplier's delivery of the Services.

7.2 The Buyer will pay the Supplier within the number of days specified in the Order Form on receipt of a valid invoice.

7.3 The Call-Off Contract Charges include all Charges for payment processing. All invoices submitted to the Buyer for the Services will be exclusive of any Management Charge.

7.4 If specified in the Order Form, the Supplier will accept payment for G-Cloud Services by the Government Procurement Card (GPC). The Supplier will be liable to pay any merchant fee levied for using the GPC and must not recover this charge from the Buyer.

7.5 The Supplier must ensure that each invoice contains a detailed breakdown of the G-Cloud Services supplied. The Buyer may request the Supplier provides further documentation to substantiate the invoice.

7.6 If the Supplier enters into a Subcontract it must ensure that a provision is included in each Subcontract which specifies that payment must be made to the Subcontractor within 30 days of receipt of a valid invoice.

7.7 All Charges payable by the Buyer to the Supplier will include VAT at the appropriate Rate.

7.8 The Supplier must add VAT to the Charges at the appropriate rate with visibility of the amount as a separate line item.

7.9 The Supplier will indemnify the Buyer on demand against any liability arising from the Supplier's failure to account for or to pay any VAT on payments made to the Supplier under this Call-Off Contract. The Supplier must pay all sums to the Buyer at least 5 Working Days before the date on which the tax or other liability is payable by the Buyer.

7.10 The Supplier must not suspend the supply of the G-Cloud Services unless the Supplier is entitled to End this Call-Off Contract under clause 18.6 for Buyer's failure to pay undisputed sums of money. Interest will be payable by the Buyer on the late payment of any

undisputed sums of money properly invoiced under the Late Payment of Commercial Debts (Interest) Act 1998.

7.11 If there's an invoice dispute, the Buyer must pay the undisputed portion of the amount and return the invoice within 10 Working Days of the invoice date. The Buyer will provide a covering statement with proposed amendments and the reason for any non-payment. The Supplier must notify the Buyer within 10 Working Days of receipt of the returned invoice if it accepts the amendments. If it does then the Supplier must provide a replacement valid invoice with the response.

7.12 Due to the nature of G-Cloud Services it isn't possible in a static Order Form to exactly define the consumption of services over the duration of the Call-Off Contract. The Supplier agrees that the Buyer's volumes indicated in the Order Form are indicative only.

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

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

9. Insurance

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

9.2 The Supplier will ensure that:

9.2.1 during this Call-Off Contract, Subcontractors hold third party public and products liability insurance of the same amounts that the Supplier would be legally liable to pay as damages, including the claimant's costs and expenses, for accidental death or bodily injury and loss of or damage to Property, to a minimum of £1,000,000

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

9.2.3 all agents and professional consultants involved in the Services hold professional indemnity insurance to a minimum indemnity of £1,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date

9.2.4 all agents and professional consultants involved in the Services hold employers liability insurance (except where exempt under Law) to a minimum indemnity of £5,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date

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

9.4 If requested by the Buyer, the Supplier will provide the following to show compliance with this clause:

9.4.1 a broker's verification of insurance

9.4.2 receipts for the insurance premium

9.4.3 evidence of payment of the latest premiums due

9.5 Insurance will not relieve the Supplier of any liabilities under the Framework Agreement or this Call-Off Contract and the Supplier will:

9.5.1 take all risk control measures using Good Industry Practice, including the investigation and reports of claims to insurers

9.5.2 promptly notify the insurers in writing of any relevant material fact under any Insurances

9.5.3 hold all insurance policies and require any broker arranging the insurance to hold any insurance slips and other evidence of insurance

9.6 The Supplier will not do or omit to do anything, which would destroy or impair the legal validity of the insurance.

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

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

9.8.1 premiums, which it will pay promptly

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

10. Confidentiality

10.1 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 incorporated Framework Agreement clause

34. 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 Save for the licences expressly granted pursuant to Clauses 11.3 and 11.4, neither

Party

shall acquire any right, title or interest in or to the Intellectual Property Rights ("IPR"s) (whether pre-existing or created during the Call-Off Contract Term) of the other Party or its licensors unless stated otherwise in the Order Form.

11.2 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.

11.3 The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Call-Off Contract Term to use the Buyer's or its relevant licensor's Buyer Data and related IPR solely to the extent necessary for

providing the Services in accordance with this Contract, including the right to grant sub-licences to Subcontractors provided that:

11.3.1 any relevant Subcontractor has entered into a confidentiality undertaking with the Supplier on substantially the same terms as set out in Framework Agreement clause 34 (Confidentiality); and

11.3.2 the Supplier shall not and shall procure that any relevant Sub-Contractor shall not, without the Buyer's written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Buyer.

11.4 The Supplier grants to the Buyer the licence taken from its Supplier Terms which licence shall, as a minimum, grant the Buyer a non-exclusive, non-transferable licence during the Call-Off Contract Term to use the Supplier's or its relevant licensor's IPR solely to the extent necessary to access and use the Services in accordance with this Call-Off Contract.

11.5 Subject to the limitation in Clause 24.3, the Buyer shall:

11.5.1 defend the Supplier, its Affiliates and licensors from and against any third-party claim:

(a) alleging that any use of the Services by or on behalf of the Buyer and/or Buyer Users is in breach of applicable Law;

(b) alleging that the Buyer Data violates, infringes or misappropriates any rights of a third party;

(c) arising from the Supplier's use of the Buyer Data in accordance with this Call-Off Contract; and

11.5.2 in addition to defending in accordance with Clause 11.5.1, the Buyer will pay the amount of Losses awarded in final judgment against the Supplier or the amount of any settlement agreed by the Buyer, provided that the Buyer's obligations under this Clause 11.5 shall not apply where and to the extent such Losses or third-party claim is caused by the Supplier's breach of this Contract.

11.6 The Supplier will, on written demand, fully indemnify the Buyer 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:

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

11.6.2 Supplier's performance of the Services

11.6.3 use by the Buyer of the Services

11.7 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:

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

11.7.2 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

11.7.3 buy a licence to use and supply the Services which are the subject of the alleged infringement, on terms acceptable to the Buyer

11.8 Clause 11.6 will not apply if the IPR Claim is from:

11.8.1 the use of data supplied by the Buyer which the Supplier isn't required to verify under this Call-Off Contract

11.8.2 other material provided by the Buyer necessary for the Services

11.9 If the Supplier does not comply with this clause 11, 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-securityclassifications>

13.6.2 guidance issued by the Centre for Protection of National Infrastructure on Risk Management: <https://www.cpni.gov.uk/content/adopt-risk-managementapproach> 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/technologycode-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.

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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. 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 are reasonable compensation and cover 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); and incorporated Framework Agreement clauses: 4.1 to 4.6, (Liability),
24 (Conflicts of interest and ethical walls), 35 (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 36 months the Supplier must provide the Buyer with an additional exit plan for approval by the Buyer at least 8 weeks before the 30 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 take the Term beyond 36 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 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 30 consecutive days, 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 4.1 to 4.6, each Party's Yearly total liability for Defaults under or in connection with this Call-Off Contract shall not exceed the greater of five hundred thousand pounds (£500,000) or one hundred and twenty-five per cent (125%) of the Charges paid and/or committed to be paid in that Year (or such greater sum (if any) as may be specified in the Order Form).

24.2 Notwithstanding Clause 24.1 but subject to Framework Agreement clauses 4.1 to

4.6, the

Supplier's liability:

24.2.1 pursuant to the indemnities in Clauses 7, 10, 11 and 29 shall be unlimited; and

24.2.2 in respect of Losses arising from breach of the Data Protection Legislation shall be as set out in Framework Agreement clause 28.

- 4.6, the
- 24.3 Notwithstanding Clause 24.1 but subject to Framework Agreement clauses 4.1 to
- Buyer's liability pursuant to Clause 11.5.2 shall in no event exceed in aggregate five million pounds (£5,000,000).
- Clause
- 24.4 When calculating the Supplier's liability under Clause 24.1 any items specified in
- 24.2 will not be taken into consideration.

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

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.

29.3 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.

29.4 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.

29.5 The Supplier will indemnify the Buyer or any Replacement Supplier for all Loss arising from both:

29.5.1 its failure to comply with the provisions of this clause

29.5.2 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

29.6 The provisions of this clause apply during the Term of this Call-Off Contract and indefinitely after it Ends or expires.

29.7 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 CallOff 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, clause 28 of the Framework Agreement is incorporated into this Call-Off Contract. For reference, the appropriate UK GDPR templates which are required to be completed in accordance with clause 28 are reproduced in this Call-Off Contract document at Schedule 7.

Schedule 1 – Services

The Supplier shall deliver the functional and non-functional services below, by procuring a Click Dimensions Licence to meet these needs, along with associated email sending credits for the Buyer:

Functional

- Essential: proven compatibility with Microsoft Dynamics CRM
- Build and distribution of bulk email communications and capturing metrics relating to these communications.
- Building of custom registration forms for internal events and managing responses from customers.
- Building custom surveys for internal and external customers and managing survey responses.
- Capacity to manage mailing lists populated both manually and automatically via customer self-service

In terms of Click Dimensions, the annual subscription includes:

- Unlimited Users
- Unlimited Contacts
- Email Marketing up to [REDACTED] emails per year
- [REDACTED] Inbox Previews
- [REDACTED] of storage
- Web Intelligence
- Lead/Contact Engagement Scoring
- Social Marketing
- Subscription Management
- Web Forms
- Survey
- Campaign Automation
- SMS Messaging via Twilio, MessageNet or BulkSMS integration
- Event integrations with Eventbrite, GoToWebinar, WebEx or Cvent
- Landing Pages
- Non-production environment



Non- Functional

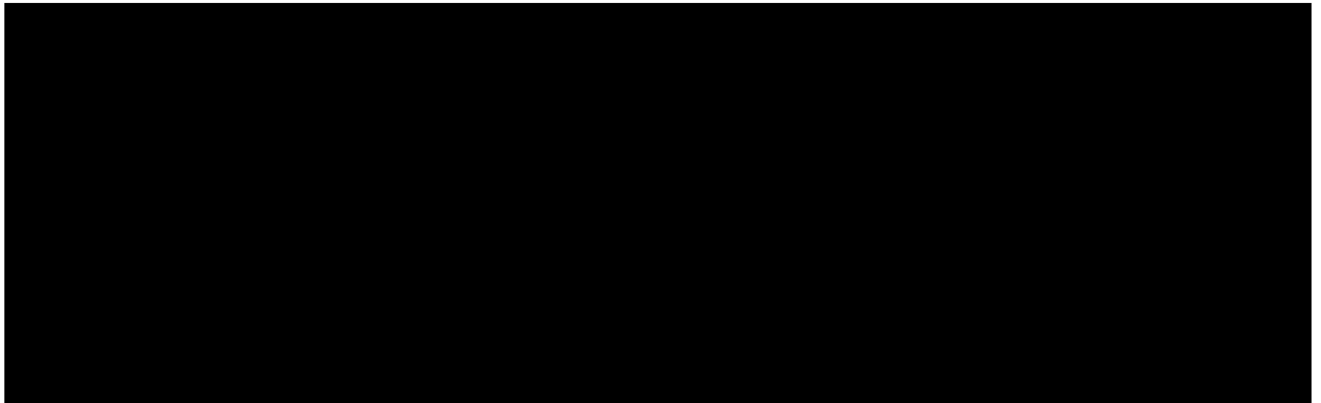
- Click Dimensions academy and support


Schedule 2: Call-Off Contract charges

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

Service Offer	Expected Cost
Total estimated; see note below	£45,900

Quoted costs exclude VAT at the prevailing rate and cover Year 1 of the contract period, from November 2023 – October 2024.





Schedule 3: Collaboration agreement (NOT USED)

Schedule 4: Alternative clauses (NOT USED)

Schedule 5: Guarantee (NOT USED)

Schedule 6: Glossary and interpretations

In this Call-Off Contract the following expressions mean:

Expression	Meaning
Additional Services	Any services ancillary to the G-Cloud Services that are in the scope of Framework Agreement Clause 2 (Services) which a Buyer may request.
Admission Agreement	The agreement to be entered into to enable the Supplier to participate in the relevant Civil Service pension scheme(s).
Application	The response submitted by the Supplier to the Invitation to Tender (known as the Invitation to Apply on the Platform).
Audit	An audit carried out under the incorporated Framework Agreement clauses.
Background IPRs	<p>For each Party, IPRs:</p> <ul style="list-style-type: none">• owned by that Party before the date of this Call-Off Contract (as may be enhanced and/or modified but not as a consequence of the Services) including IPRs contained in any of the Party's Know-How, documentation and processes• created by the Party independently of this Call-Off Contract, or <p>For the Buyer, Crown Copyright which isn't available to the Supplier otherwise than under this Call-Off Contract, but excluding IPRs owned by that Party in Buyer software or Supplier software.</p>

Buyer	The contracting authority ordering services as set out in the Order Form.
Buyer Data	All data supplied by the Buyer to the Supplier including Personal Data and Service Data that is owned and managed by the Buyer.
Buyer Personal Data	The Personal Data supplied by the Buyer to the Supplier for purposes of, or in connection with, this Call-Off Contract.
Buyer Representative	The representative appointed by the Buyer under this Call-Off Contract.
Buyer Software	Software owned by or licensed to the Buyer (other than under this Agreement), which is or will be used by the Supplier to provide the Services.
Call-Off Contract	This call-off contract entered into following the provisions of the Framework Agreement for the provision of Services made between the Buyer and the Supplier comprising the Order Form, the Call-Off terms and conditions, the Call-Off schedules and the Collaboration Agreement.

Charges	The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under this Call-Off Contract.
Collaboration Agreement	An agreement, substantially in the form set out at Schedule 3, between the Buyer and any combination of the Supplier and contractors, to ensure collaborative working in their delivery of the Buyer's Services and to ensure that the Buyer receives end-to-end services across its IT estate.
Commercially Sensitive Information	Information, which the Buyer has been notified about by the Supplier in writing before the Start date with full details of why the Information is deemed to be commercially sensitive.
Confidential Information	<p>Data, Personal Data and any information, which may include (but isn't limited to) any:</p> <ul style="list-style-type: none"> information about business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential').
Control	'Control' as defined in section 1124 and 450 of the Corporation Tax Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly.

Controller	Takes the meaning given in the UK GDPR.
Crown	The government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies carrying out functions on its behalf.
Data Loss Event	Event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Call-Off Contract and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
Data Protection Impact Assessment (DPIA)	An assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data.
Data Protection Legislation (DPL)	(i) the UK GDPR 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.
Data Subject	Takes the meaning given in the UK GDPR

Default	<p>Default is any:</p> <ul style="list-style-type: none"> • breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term) • other default, negligence or negligent statement of the Supplier, of its Subcontractors or any Supplier Staff (whether by act or omission), in connection with or in relation to this Call-Off Contract <p>Unless otherwise specified in the Framework Agreement the Supplier is liable to CCS for a Default of the Framework Agreement and in relation to a Default of the Call-Off Contract, the Supplier is liable to the Buyer.</p>
DPA 2018	Data Protection Act 2018.
Employment Regulations	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) ('TUPE')
End	Means to terminate; and Ended and Ending are construed accordingly.
Environmental Information Regulations or EIR	The Environmental Information Regulations 2004 together with any guidance or codes of practice issued by the Information Commissioner or relevant government department about the regulations.
Equipment	The Supplier's hardware, computer and telecoms devices, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from CCS or the Buyer) in the performance of its obligations under this Call-Off Contract.

ESI Reference Number	The 14 digit ESI reference number from the summary of the outcome screen of the ESI tool.
Employment Status Indicator test tool or ESI tool	The HMRC Employment Status Indicator test tool. The most up-to-date version must be used. At the time of drafting the tool may be found here: https://www.gov.uk/guidance/check-employment-status-fortax
Expiry Date	The expiry date of this Call-Off Contract in the Order Form.

Force Majeure	<p>A force Majeure event means anything affecting either Party's performance of their obligations arising from any:</p> <ul style="list-style-type: none"> • acts, events or omissions beyond the reasonable control of the affected Party • riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare • acts of government, local government or Regulatory Bodies • fire, flood or disaster and any failure or shortage of power or fuel • industrial dispute affecting a third party for which a substitute third party isn't reasonably available <p>The following do not constitute a Force Majeure event:</p> <ul style="list-style-type: none"> • any industrial dispute about the Supplier, its staff, or failure in the Supplier's (or a Subcontractor's) supply chain • any event which is attributable to the wilful act, neglect or failure to take reasonable precautions by the Party seeking to rely on Force Majeure • the event was foreseeable by the Party seeking to rely on Force Majeure at the time this Call-Off Contract was entered into • any event which is attributable to the Party seeking to rely on Force Majeure and its failure to comply with its own business continuity and disaster recovery plans
Former Supplier	<p>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).</p>
Framework Agreement	<p>The clauses of framework agreement RM1557.13 together with the Framework Schedules.</p>

Fraud	Any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Call-Off Contract or
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	defrauding or attempting to defraud or conspiring to defraud the Crown.
Freedom of Information Act or FoIA	The Freedom of Information Act 2000 and any subordinate legislation made under the Act together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to the legislation.
G-Cloud Services	The cloud services described in Framework Agreement Clause 2 (Services) 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.
UK GDPR	The retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679).
Good Industry Practice	Standards, practices, methods and process conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar undertaking in the same or similar circumstances.

Government Procurement Card	The government's preferred method of purchasing and payment for low value goods or services.
Guarantee	The guarantee described in Schedule 5.
Guidance	Any current UK government guidance on the Public Contracts Regulations 2015. In the event of a conflict between any current UK government guidance and the Crown Commercial Service guidance, current UK government guidance will take precedence.
Implementation Plan	The plan with an outline of processes (including data standards for migration), costs (for example) of implementing the services which may be required as part of Onboarding.
Indicative test	ESI tool completed by contractors on their own behalf at the request of CCS or the Buyer (as applicable) under clause 4.6.
Information	Has the meaning given under section 84 of the Freedom of Information Act 2000.
Information security management system	The information security management system and process developed by the Supplier in accordance with clause 16.1.

Inside IR35	<p>Contractual engagements which would be determined to be within the scope of the IR35 Intermediaries legislation if assessed using the ESI tool.</p>
Insolvency event	<p>Can be:</p> <ul style="list-style-type: none"> • a voluntary arrangement • a winding-up petition • the appointment of a receiver or administrator • an unresolved statutory demand • a Schedule A1 moratorium • a Dun & Bradstreet rating of 10 or less
Intellectual Property Rights or IPR	<p>Intellectual Property Rights are:</p> <ul style="list-style-type: none"> • copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information • applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction • all other rights having equivalent or similar effect in any country or jurisdiction
Intermediary	<p>For the purposes of the IR35 rules an intermediary can be:</p> <ul style="list-style-type: none"> • the supplier's own limited company • a service or a personal service company • a partnership <p>It does not apply if you work for a client through a Managed Service Company (MSC) or agency (for example, an employment agency).</p>

IPR claim	As set out in clause 11.5.
IR35	IR35 is also known as 'Intermediaries legislation'. It's a set of rules that affect tax and National Insurance where a Supplier is contracted to work for a client through an Intermediary.
IR35 assessment	Assessment of employment status using the ESI tool to determine if engagement is Inside or Outside IR35.
Know-How	All ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the G-Cloud Services but excluding know-how already in the Supplier's or Buyer's possession before the Start date.
Law	Any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, 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.
Loss	All losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and ' Losses ' will be interpreted accordingly.

Lot	Any of the 3 Lots specified in the ITT and Lots will be construed accordingly.
Malicious Software	Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
Management Charge	The sum paid by the Supplier to CCS being an amount of up to [REDACTED] for the Services invoiced to Buyers (net of VAT) in each month throughout the duration of the Framework Agreement and thereafter, until the expiry or End of any Call-Off Contract.
Management Information	The management information specified in Framework Agreement Schedule 6.
Material Breach	Those breaches which have been expressly set out as a Material Breach and any other single serious breach or persistent failure to perform as required under this Call-Off Contract.
Ministry of Justice Code	The Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000.

New Fair Deal	The revised Fair Deal position in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 as amended.
Order	An order for G-Cloud Services placed by a contracting body with the Supplier in accordance with the ordering processes.
Order Form	The order form set out in Part A of the Call-Off Contract to be used by a Buyer to order G-Cloud Services.
Ordered G-Cloud Services	G-Cloud Services which are the subject of an order by the Buyer.
Outside IR35	Contractual engagements which would be determined to not be within the scope of the IR35 intermediaries legislation if assessed using the ESI tool.
Party	The Buyer or the Supplier and ‘Parties’ will be interpreted accordingly.

Personal Data	Takes the meaning given in the UK GDPR.
Personal Data Breach	Takes the meaning given in the UK GDPR.
Platform	The government marketplace where Services are available for Buyers to buy.
Processing	Takes the meaning given in the UK GDPR.
Processor	Takes the meaning given in the UK GDPR.

Prohibited act	<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"> ● induce that person to perform improperly a relevant function or activity ● reward that person for improper performance of a relevant function or activity ● commit any offence: <ul style="list-style-type: none"> ○ under the Bribery Act 2010 ○ under legislation creating offences concerning Fraud ○ at common Law concerning Fraud ○ committing or attempting or conspiring to commit Fraud
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Project Specific IPRs	<p>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.</p>
Property	<p>Assets and property including technical infrastructure, IPRs and equipment.</p>

Protective Measures	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.
PSN or Public Services Network	The Public Services Network (PSN) is the government's highperformance network which helps public sector organisations work together, reduce duplication and share resources.
Regulatory body or bodies	Government departments and other bodies which, whether under statute, codes of practice or otherwise, are entitled to investigate or influence the matters dealt with in this Call-Off Contract.
Relevant person	Any employee, agent, servant, or representative of the Buyer, any other public body or person employed by or on behalf of the Buyer, or any other public body.
Relevant Transfer	A transfer of employment to which the employment regulations applies.

Replacement Services	Any services which are the same as or substantially similar to any of the Services and which the Buyer receives in substitution for any of the services after the expiry or Ending or partial Ending of the Call-Off Contract, whether those services are provided by the Buyer or a third party.
Replacement supplier	Any third-party service provider of replacement services appointed by the Buyer (or where the Buyer is providing replacement Services for its own account, the Buyer).
Security management plan	The Supplier's security management plan developed by the Supplier in accordance with clause 16.1.
Services	The services ordered by the Buyer as set out in the Order Form.
Service data	Data that is owned or managed by the Buyer and used for the GCloud Services, including backup data.

Service definition(s)	The definition of the Supplier's G-Cloud Services provided as part of their Application that includes, but isn't limited to, those items listed in Clause 2 (Services) of the Framework Agreement.
Service description	The description of the Supplier service offering as published on the Platform.
Service Personal Data	The Personal Data supplied by a Buyer to the Supplier in the course of the use of the G-Cloud Services for purposes of or in connection with this Call-Off Contract.
Spend controls	The approval process used by a central government Buyer if it needs to spend money on certain digital or technology services, see https://www.gov.uk/service-manual/agile-delivery/spend-controlscheck-if-you-need-approval-to-spend-money-on-a-service
Start date	The Start date of this Call-Off Contract as set out in the Order Form.

Subcontract	Any contract or agreement or proposed agreement between the Supplier and a subcontractor in which the subcontractor agrees to provide to the Supplier the G-Cloud Services or any part thereof or facilities or goods and services necessary for the provision of the GCloud Services or any part thereof.
Subcontractor	Any third party engaged by the Supplier under a subcontract (permitted under the Framework Agreement and the Call-Off Contract) and its servants or agents in connection with the provision of G-Cloud Services.
Subprocessor	Any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract.
Supplier	The person, firm or company identified in the Order Form.
Supplier Representative	The representative appointed by the Supplier from time to time in relation to the Call-Off Contract.

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

Schedule 7: UK GDPR Information

This schedule reproduces the annexes to the UK GDPR schedule contained within the Framework Agreement and incorporated into this Call-off Contract and clause and schedule references are to those in the Framework Agreement but references to CCS have been amended.

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

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Buyer is Controller and the Supplier is Processor</p> <p>The Parties acknowledge that in accordance with paragraphs 2 to paragraph 15 of Schedule 7 and for the purposes of the Data Protection Legislation, Buyer is the Controller and the Supplier is the Processor of the Personal Data.</p>

Duration of the Processing	For the duration of the contract including extension.
Nature and purposes of the Processing	The purpose of processing this data is to ensure employee compliance with organisational policies. 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.
Type of Personal Data	<ul style="list-style-type: none"> • Name • Email address • General Identifier: Shortcode
Categories of Data Subject	Staff (including volunteers, agents, and temporary workers) Customer data, including name and email address.
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	Detailed in the Suppliers offboarding process as described in the Supplier's G-Cloud Service offering.

Annex 2: Joint Controller Agreement (NOT USED)

Part C: COTS Third Party Software Licensing Terms

The Supplier is a reseller of the Click Dimensions platform. As part of the agreement to this Call-Off Contract, the Buyer agrees to comply with the use of the ClickDimensions platform Usage terms of Click Dimensions are solely between the Buyer and ClickDimensions, with the Buyer's use of the platform being subject to the ClickDimensions Terms of Service available here: <https://clickdimensions.com/about/terms> and below:



ClickDimensions Terms of Service

THESE TERMS OF SERVICE (THESE “**TERMS**”) GOVERN ALL SUBSCRIPTION SERVICES (“**SERVICES**”) PROVIDED BY CLICKDIMENSIONS LLC (“**CLICKDIMENSIONS**”) PURSUANT TO ORDERS PLACED BY YOU THROUGH CLICKDIMENSIONS OR AN AUTHORIZED RE-SELLER (“**SELLER**”). **YOU MUST HAVE CONFIRMATION OF YOUR ORDER FROM CLICK-DIMENSIONS OR A SELLER (“ORDER FORM”) IN ORDER TO USE THE SERVICES, WHICH IS INCORPORATED INTO AND MADE PART OF THESE TERMS. IF YOU DO NOT HAVE AN ORDER FORM, YOU MAY NOT ACCESS AND USE THE SERVICES.** Capitalized terms used in these Terms have the meaning assigned in Section 13 unless otherwise defined in the Order Form or these Terms.

1.Access to the Services. Subject to Customer's compliance with these Terms, ClickDimensions' Acceptable Use Policy and payment of the applicable fees as set forth in the Order Form, ClickDimensions grants Customer a nonexclusive, nontransferable limited license during the Subscription Term to use the Services for your internal business purposes and subject to any other restrictions or limitations identified in these Terms or the applicable Order Form, including a limitation on the volume specified on the applicable Order Form (as the same may be updated during the applicable Subscription Term).

1.1. This Agreement is not intended to nor does it provide any license rights to the Software. The original and all copies of the Software and Services remain the sole property of ClickDimensions or its licensors, subject to all of the confidentiality and other restrictions set forth in these Terms. Customer must retain all legends relating to copyright, trademarks, patents, or confidentiality on all copies of the Documentation or any print of a screen display from the Services. ClickDimensions reserves all right, title and interest in and to the Software and Services under all applicable federal, state and local laws of the United States and any other jurisdiction. ClickDimensions is not obligated to provide, and Customer acquires no right of any kind with respect to, any source code for the Software.

1.2. The Services may interoperate with various third-party platforms such as Twitter, Facebook, LinkedIn, Instagram, and other social networking sites as determined by ClickDimensions from time to time (“**Third-Party Platforms**”). Continued interoperation of the Services with any Third-Party Platform is dependent upon the availability of each such platform and ClickDimensions may cease to provide such functionality if access to any

Third-Party Platform is not available to ClickDimensions on commercially reasonable terms.

2. Term. These Terms are effective on the date that Customer signs an Order Form and ends on the date that ClickDimensions is no longer obligated to provide Customer with the Services under any Order Forms unless terminated earlier pursuant to Section 9. The initial Subscription Term for any applicable Order Form will begin on a date mutually agreed upon by ClickDimensions or Seller, as applicable, and the Customer and end on the expiration of the term set forth on the applicable Order Form (the “**Initial Term**”). Thereafter, the Subscription Term for an Order will automatically renew for additional one year periods (each a “**Renewal Term**”) commencing on the last day of the Initial Term or the Renewal Term, as applicable, unless (i) Customer notifies ClickDimensions or Seller, as applicable, of its intent to terminate at the then end of the then current Term by providing notice to ClickDimensions or Seller, as applicable, at least 60 days prior to the end of such term, or (ii) earlier terminated in accordance with the provisions of Section 9. Notwithstanding the Customer’s ability to terminate in accordance with this Section 2 or Section 9, if Customer does not agree with the automatic renewal provisions of this Section 2, its Order Form will be subject to a ten percent (10%) surcharge.

3. Conditions of Use. Customer’s right to use the Services is subject to the following restrictions and limitations.

3.1. The Services must not be used for the sending of unsolicited commercial email (as such term is defined in the CAN-SPAM Act of 2003 and any rules adopted under such act (the “**Act**”) or any other Applicable Law);

3.2. The Services will only be used for lawful purposes and in accordance with Applicable Law;

3.3. The Services will not be used for hosting content, including images and documents, that knowingly infringe on the intellectual property rights of third parties, or that include any obscene or libelous material or other material that violates any Applicable Law;

3.4. You will not access or otherwise use third party mailing lists or otherwise prepare or distribute mass unsolicited commercial email as such term is defined in the Act or other Applicable Law in connection with your use of the Services;

3.5. You will import, access or otherwise use only lists for which all listed parties have consented to receive correspondence from you in connection with your use of the Services; You hereby covenant that you will not use any other lists in connection with your use of the Services;

3.6 You acknowledge that not all email messages sent through use of the Services will be received by their intended recipients;

3.7 Every email message sent by you in connection with the Services must contain the ClickDimensions “unsubscribe” link that allows the recipient to remove themselves from your mailing list;

3.8 You will comply with the restrictions on content of email messages and activities using the Service as set forth or referenced in these Terms;

3.9. You are the sole or designated “sender” (as such term is defined in the Act) of any email message sent by you using the Services;

3.10. The “from” line of any email message sent by You using the Services will accurately and in a non-deceptive manner identify your organization, your products or your services;

3.11. The “subject” line of any email message sent by You using the Services will not contain any deceptive or misleading content regarding the overall subject matter of the email message;

3.12. You will include in any email message sent by You using the Services your valid physical address, which may be a valid post office box meeting the registration requirements established by the United States Postal Service;

3.13. In any email message sent by you using the Services you will not include any incentives (e.g., coupons, discounts, awards) that encourage a recipient to forward the email message to another recipient; and

3.14. In your use of the Services, you agree to represent you or your organization accurately and will not impersonate any other person, whether actual or fictitious.

3.15. Customer’s use of Third-Party Platforms is at Customer’s own risk and is governed by the terms and conditions of such Third-Party Platforms (and you shall comply with all such terms and conditions). ClickDimensions makes no representations and has no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such Third-Party Platform or any transactions completed and any contract entered into by you with any such third party.

3.16. Customer will not:

3.16.1. Resell, sublicense, time-share, or otherwise share the Services with any third party unless otherwise approved by ClickDimensions;

3.16.2. Make the Services available to anyone who is not an “Authorized User.” An Authorized User is an employee of Customer, or a person to whom Customer has outsourced service, who is authorized to access the Software;

3.16.3. Modify or create derivative works of or decompile, disassemble or reverse-engineer the Software or otherwise attempt to derive the source code of the Software;

3.16.4. Copy any feature, design or graphic in the Software or the Services; or

3.16.5. Access or use the Services for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

3.17. Microsoft Power Platform User Licenses are required to enable use of ClickDimensions PowerPack offering. Deployment and use of Microsoft Power Platform User Licenses are the responsibility of Customer and Customer is responsible for compliance with any Microsoft Power Platform licensing agreements.

4. Customer Data.

4.1. Customer must provide all data for use in the Services (the “**Customer Data**”), and ClickDimensions is not obligated to modify or add to the Customer Data. As between Customer and ClickDimensions, Customer is solely responsible for the content, legality, quality and accuracy of the Customer Data, and for determining the suitability of the Services for Customer’s business. Customer represents and warrants complying with Applicable Laws regarding Customer Data. Customer will not upload any of the following types of information for use in the Services: (a) personal health information, (b) driver’s license numbers, (c) passport numbers, (d) social security, tax ID or similar numbers, or (e) bank, checking, credit card, debit card, or other financial account numbers.

4.2. Customer owns all right, title and interest in and to the Customer Data. Customer is solely responsible and liable for the Customer Data and will control access to and the management of the Customer Data through your account and Authorized Users.

4.3. ClickDimensions must keep the Customer Data confidential in accordance with Section 11 of these Terms.

4.4. ClickDimensions will use the Customer Data strictly as necessary to carry out its obligations under these Terms, and for no other purpose; provided, however, ClickDimensions may access and use Customer Data (i) as necessary to identify or resolve technical problems or respond to complaints about the Services; (ii) to improve the Services, and (iii) to identify trends and publish reports on its findings provided the reports include data aggregated from more than one customer site and do not identify Customer.

4.5. ClickDimensions uses industry-standard technical and organizational measures in compliance with Applicable Laws to keep Customer Data secure and to protect against accidental loss or unlawful destruction, alteration, disclosure or access.

4.6. In the event of a security breach that may affect Customer, if and to the extent required by Applicable Laws: (i) ClickDimensions will notify Customer of the breach and provide a description of the event, and (ii) If ClickDimensions reasonably determines, and notifies Customer, that it is necessary for all or part of such information to be forwarded on to individuals on one or more of Customer’s email lists, Customer will promptly forward such information to the individuals on such list or lists, all in accordance with Applicable Laws.

4.7. By agreeing to these Terms, each of Customer and ClickDimensions agree to comply with, and be bound by, the terms of the [ClickDimensions Data Processing Addendum](#) to the extent applicable to the Services delivered pursuant to these Terms.

5. Consulting Services Provided by ClickDimensions.

5.1. ClickDimensions will provide the consulting and professional services described on the applicable Order Form (“**Consulting Services**”). The fees payable for such Consulting Services will be set forth on the applicable Order Form.

5.2. If there are a specific number of hours included in the Consulting Services purchased, those hours will expire at the end of the Subscription Term. Consulting Services are non-cancellable and all fees for Consulting Services are non-refundable.

6. Warranties.

6.1. ClickDimensions warrants that (i) the Services will function substantially in accordance with the Documentation; (ii) ClickDimensions owns or otherwise has the right to provide the Services to Customer under these Terms; and (iii) the Services will be provided in compliance with Applicable Law. If the warranty set forth in subsection 6.1(i) is breached during the Term, ClickDimensions will modify the Services to conform to the Documentation. If ClickDimensions is not able to provide such modification in a reasonable time period (not to exceed 30 days) and on commercially reasonable terms, either party may terminate the affected Order Form(s) and ClickDimensions or Seller, as applicable, shall refund to Customer all prepaid subscription fees for unused Services under the relevant Order Form(s).

6.2. ClickDimensions or Seller, as applicable, has no obligations under Section 6.1(i) if (i) the Software has been modified by Customer or any third party, unless the modification has been pre-approved in writing by ClickDimensions or Seller, as applicable; or (ii) the non-conformance is caused by any third-party software or hardware, by accidental damage or by other matters beyond ClickDimensions’ or Seller’s, as applicable, reasonable control.

6.3. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, THE SERVICES ARE PROVIDED WITH NO OTHER WARRANTIES OF ANY KIND, AND CLICKDIMENSIONS AND SELLER DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER CLICKDIMENSIONS NOR SELLER WARRANT THAT THE USE OF THE SUBSCRIPTION SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. NEITHER CLICKDIMENSIONS NOR SELLER IS RESPONSIBLE OR LIABLE IN ANY MANNER FOR ANY THIRD-PARTY PLATFORMS ASSOCIATED WITH OR UTILIZED IN CONNECTION WITH THE SERVICES, INCLUDING THE FAILURE OF ANY SUCH THIRD-PARTY PLATFORMS.

7. Fees; Payment Terms.

7.1. Customer must pay the fees listed in the applicable Order Form to receive uninterrupted Service. The Fees are due and payable in United States Dollars at the start of the Subscription Term (at which time ClickDimensions or Seller, as applicable, will send an invoice) and must be paid immediately following receipt of the invoice unless otherwise set forth in the applicable Order Form. The fees set forth on the applicable Order Form are exclusive of all taxes, levies, and duties imposed by taxing authorities, and Customer is responsible for all such taxes, excluding taxes based solely on ClickDimensions’ or Seller’s, as applicable, income. Except as provided in Section 6.1 and Section 8.1.1, or in the event

of a material breach by ClickDimensions or Seller, as applicable, that it fails to cure within thirty (30) days of notice by Customer, the fees are non-refundable.

7.2. Delinquent payments are subject to late payment fees in the amount of 1.5% of the overdue balance per month (or the maximum permitted by law, whichever is lower), plus any expenses associated with collections.

7.3. ClickDimensions reserves the right to suspend service if payment is not received by renewal date specified in the order form. Service will be reinstated upon receipt of payment.

7.4. If Customer exceeds the volume specified on the applicable Order Form, ClickDimensions or Seller, as applicable, reserves the right to invoice Customer for the incremental Services for the remainder of the then current Subscription Term. Customer will remit payment for such invoice immediately following receipt.

8. Indemnification

8.1. **By ClickDimensions.** ClickDimensions will indemnify, defend and hold harmless Customer, its affiliates, directors and employees (collectively, the “**Customer Indemnitees**”) from any fines, penalties or damages finally awarded against any or all of the Customer Indemnitees (including reasonable costs and legal fees incurred by any of the Customer Indemnitees) arising out of any third party suit, claim or other legal action (a “**Claim**”) alleging that (i) the Services have not been provided in accordance with Applicable Law; or (ii) the use of the Services by Customer in accordance with these Terms infringes any copyright, trade secret or patent.

8.1.1. If there is a Claim under Section 8.1(ii), or ClickDimensions believes that such a Claim likely, ClickDimensions will, at its option, either (i) obtain a license from such third party for the benefit of Customer; (ii) modify the Services so that they no longer infringe; or (iii) if neither of these options is commercially feasible, terminate the relevant Order Form under these Terms, in which case ClickDimensions shall refund to Customer all pre-paid subscription fees to ClickDimensions under the relevant Order Form for unused Services.

8.1.2. ClickDimensions shall have no indemnification obligations under Section 8.1(ii) or otherwise for any Claim arising out of: (i) a combination of the Services with software or service not supplied, or approved by ClickDimensions, to the extent the alleged infringement is caused by such combination; (ii) any repair, adjustment, modification or alteration to the Services by Customer or any third party, unless approved by ClickDimensions; or (iii) any refusal by Customer to install and use a non-infringing version of the Services offered by ClickDimensions.

This Section states the entire liability of ClickDimensions with respect to any Claim of intellectual property infringement arising out of use of the Services.

8.2. **By Customer.** Customer will indemnify, defend and hold harmless ClickDimensions, Seller and their respective affiliates, directors and employees (collectively, the “**ClickDimensions Indemnitees**”) from any fines, penalties or damages finally awarded against

any or all of the ClickDimensions Indemnitees (including reasonable costs and legal fees incurred by any of the ClickDimensions Indemnitees) arising out of any Claim for (i) that any of Customer's information, documents, samples, products, services, or other materials provided by Customer to ClickDimensions or otherwise used by Customer in connection with the Services infringe any copyright, trade secret or patent, or, or (ii) failure to comply with Applicable Law, to the extent that any such Claim arises out of or resulted from Customer's use of the Services (and not the Services itself).

8.3 Indemnification Process. If a Claim that may give rise to indemnification is commenced, the Indemnified Party will provide written notice of the Claim to the Indemnifying Party within five (5) days of receipt of the Claim (a "**Claim Notice**"). The Indemnifying Party, at its sole expense, will promptly take control of the defense. The Indemnified Party shall have the right to participate in any proceedings in such manner as it may deem appropriate at its own cost and expense. The Indemnified Party will cooperate with the Indemnifying Party in the defense of the Claim. In no event will the Indemnifying Party enter into a settlement arrangement which requires any payment or other consideration from the Indemnified Party, or contains a stipulation to or an admission or acknowledgment of any wrongdoing (whether in tort or otherwise) on the part of the Indemnified Party, without the Indemnified Party's prior written consent, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party will be relieved of its indemnification obligation under this Section 8 if the Indemnified Party materially fails to comply with this Section and such material failure prejudices the Indemnifying Party's defense of the Claim.

9. Termination and Suspension.

9.1. Either party may terminate any Order Form if the other party materially breaches any term of the Order Form or these Terms and the breach is not cured within 30 days after written notice is provided to the breaching party.

9.2. If ClickDimensions or Seller, as applicable, terminates an Order Form because of non-payment by Customer, all unpaid fees for the remainder of the Subscription Term are immediately due and payable.

9.3. ClickDimensions reserves the right to suspend access to the Services, at its sole discretion, if ClickDimensions determines in its reasonable discretion that Customer is misusing (e.g., SPAM) the Service in a way that adversely affects the reputation and deliverability of the overall ClickDimensions solution. ClickDimensions will use commercially reasonable efforts to notify Customer prior to any such suspension unless ClickDimensions reasonably determines: (a) it is prohibited from doing so under Applicable Law or under legal process (such as court or government administrative agency processes, orders, mandates, and the like); or (b) it is necessary to delay notice in order to prevent imminent harm to the Services or a third party. Under circumstances where notice is delayed, ClickDimensions will provide notice if and when the related restrictions in the previous sentence no longer apply.

9.4. ClickDimensions may adjust prices, availability levels, or other terms and conditions in order to meet its fiduciary and operational obligations when any Order Form is being

renewed, including, but not limited to, Order Form amendments during the then current Initial Term or Renewal Term, as applicable.

9.5. Upon any expiration or termination of an Order or these Terms, and upon expiration of the Subscription Term if the Order is not renewed for any reason, the rights and licenses granted hereunder will automatically terminate, and Customer will cease all further use of the Service. ClickDimensions will have no liability for any costs, losses, damages, or liabilities arising out of or related to termination of any Order or these Terms. Upon expiration or termination of any Order or these Terms, ClickDimensions will destroy any Customer Data in the possession or under the control of ClickDimensions within 90 days (or earlier upon request) of the effective date termination or expiration, and ClickDimensions will have no other further obligation to maintain or provide access to any Customer Data. If and to the extent permitted by Applicable Laws, ClickDimensions may retain a copy of the Customer Data for the sole purpose of serving as evidence in the context of the establishment, exercise or defense of legal claim(s) or of complying with legal obligations under Applicable Law, which will be deleted or anonymized upon expiration of the applicable legal retention period. The provisions of Sections 4 (Customer Data), 6 (Fees; Payment Terms), 8 (Indemnification), this Section 9.5 (Effect of Termination), 10 (Limitation of Liability), and 11 (Confidentiality) will survive termination of these Terms.

10. Limitation of Liability.

10.1. SUBJECT TO SECTION 10.3 BELOW, NEITHER PARTY NOR SELLER SHALL BE LIABLE TO THE OTHER UNDER THESE TERMS FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST OR CORRUPTED DATA, LOST PROFITS, LOST BUSINESS OR LOST OPPORTUNITY), OR ANY OTHER SIMILAR DAMAGES UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY), EVEN IF THE OTHER PARTY HAS BEEN INFORMED OF THIS POSSIBILITY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE SERVICES, SOFTWARE AND DOCUMENTATION NECESSARY TO ACHIEVE CUSTOMER'S INTENDED RESULTS, AND FOR THE USE AND RESULTS OF THE SERVICES.

10.2. SUBJECT TO SECTION 10.3 BELOW AND EXCEPT FOR CUSTOMER'S OBLIGATIONS TO PAY ALL AMOUNTS PROPERLY DUE AND OWING HEREUNDER, EACH PARTY'S TOTAL LIABILITY FOR ANY DIRECT LOSS, COST, CLAIM OR DAMAGES OF ANY KIND RELATED TO THE RELEVANT ORDER FORM SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID OR PAYABLE TO CLICKDIMENSIONS UNDER SUCH ORDER FORM DURING THE 12 MONTHS BEFORE THE EVENT GIVING RISE TO SUCH LOSS, COST, CLAIM OR DAMAGES. THIS LIMITATION ON LIABILITY WAS AND IS AN EXPRESS PART OF THE BARGAIN BETWEEN CLICKDIMENSIONS, SELLER, AS APPLICABLE, AND CUSTOMER AND IS A CONTROLLING FACTOR IN THE SETTING OF THE FEES PAYABLE TO CLICKDIMENSIONS.

10.3. THE LIMITATIONS ON LIABILITY SET FORTH IN SECTIONS 10.1 AND 10.2 DO NOT APPLY TO LIABILITY ARISING FROM: (I) FRAUD OR WILLFUL MISCONDUCT; OR (II) A PARTY'S DUTY TO INDEMNIFY THE OTHER FOR THIRD-PARTY CLAIMS UNDER THIS AGREEMENT; OR (III) A BREACH OF A PARTY'S CONFIDENTIALITY, AND COMPLIANCE WITH LAW OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, EACH

PARTY'S LIABILITY FOR CLAIMS ARISING OUT OF A BREACH DESCRIBED IN THIS SECTION 10.3(III) SHALL NOT EXCEED THE GREATER OF TEN TIMES THE FEES PAID DURING 12-MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE OR ONE MILLION DOLLARS.

11. Confidentiality.

11.1 Each recipient of Confidential Information (the "Recipient") agrees that it will not disclose, provide, or otherwise make available any Confidential Information of the other party (the "Disclosing Party") during the Subscription Term and for a period of 5 years thereafter, and in the case of Confidential Information that constitutes a trade secret under applicable law, for as long as such Confidential Information remains a trade secret. Each Recipient agrees that it will obtain a written confidentiality agreement from each third party (consultant or any other person) not governed by these Terms who is provided access to the Confidential Information of the Disclosing Party. In addition, each Recipient agrees that it will not: (i) use the Disclosing Party's Confidential Information for any purpose beyond the scope of these Terms; (ii) copy any part of the Confidential Information or disclose any part of the Confidential Information to any third party other than Recipient's employees or consultants who need the information to perform their duties; (iii) authorize or permit any such employee or consultant to use or disclose any part of the Confidential Information in violation of these Terms; or (iv) produce any product nor offer any service of any nature whatsoever based in whole or in part on the Confidential Information nor cause or assist any third party in doing so.

11.2. The Recipient's obligations under these Terms will not apply to any portion of the Confidential Information that: (1) at the time of disclosure to Recipient, was in the public domain or subsequently becomes a part of the public domain through no breach of these Terms; (2) Recipient had in its possession at the time of disclosure by the Disclosing Party, as established by written documentation in existence at that time, and that was not acquired directly or indirectly from the Disclosing Party or with knowledge of confidentiality restrictions; (3) Recipient subsequently acquires by lawful means from a third-party who is under no obligation of confidentiality or non-use owed to Disclosing Party; or (4) Recipient subsequently independently develops without any use of or reference to the Confidential Information.

11.3. If Recipient is legally compelled to disclose any portion of the Confidential Information in connection with a lawsuit or similar proceeding or to any governmental agency, Recipient will give Disclosing Party prompt notice of that fact, including in its notice the legal basis for the required disclosure and the nature of the Confidential Information that must be disclosed. Recipient will cooperate fully with Disclosing Party in obtaining a protective order or other appropriate protection relating to the disclosure and subsequent use of the Confidential Information. Recipient will disclose only that portion of the Confidential Information that is legally required to be disclosed.

12. Miscellaneous.

12.1. These Terms, together with the Order Form, represent the entire agreement of the parties with respect to the subject matter hereof, and supersede any prior or current understandings, whether written or oral. If there is a conflict between these Terms and an

Order Form, these Terms will prevail. No document, purchase order, or any handwritten or typewritten text which purports to alter or amend these Terms will alter or amend any provision of these Terms, unless the parties both specify in writing that such terms or conditions control.

12.2. Any waiver, modification or amendment of any provision of these Terms or any Order Form will be effective only if in writing and signed by duly authorized representatives of both parties.

12.3. These Terms will be governed by the laws of the state of Georgia (excluding its choice of law rules).

12.4. Customer will not assign or otherwise transfer any of its rights or obligations under these Terms without the prior written consent of ClickDimensions. Neither ClickDimensions nor Seller may withhold such consent in the case of an assignment by Customer of its rights and obligations to an entity that has acquired all, or substantially all of Customer's assets, or to an assignment that is part of a genuine corporate restructure. Any assignment in breach of this Section is void.

12.5. Customer and ClickDimensions will: (a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption; (b) implement and maintain policies and procedures, including adequate procedures under applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, to ensure compliance with such laws and enforce them where appropriate; and (c) promptly report to the other any request or demand for any undue financial or other advantage of any kind received in connection with the performance of these Terms.


12.6. Customer may not export or re-export, directly or indirectly, any Services, Documentation or confidential information to any countries outside the United States except as permitted under the U.S. Commerce Department's Export Administration Regulations.

13. Glossary.

13.1. "Applicable Law" means all applicable laws, orders, regulations and other acts of all governmental authorities, foreign or domestic, having jurisdiction over these Terms or the activities of such party hereunder.

13.2. "Confidential Information" means all information or material which (i) gives the Disclosing Party a competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of the Disclosing Party; or (ii) which is either (A) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, (B) known by the Recipient to be considered confidential and proprietary, or (C) from all the relevant circumstances would reasonably be assumed to be confidential and proprietary.

13.3. "Customer Data" means any electronic information stored in the Software database, including Personal Data.



13.4. “Documentation” means user documentation provided electronically by ClickDimensions for use with the Services, as periodically updated and located at <https://support.clickdimensions.com/hc/en-us>.

13.5. “Order Form” means a document provided by ClickDimensions and signed by Customer that describes ClickDimensions’ subscription service offering.

13.6. “Personal Data” means any information relating to (i) an identified or identifiable natural person and, (ii) an identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable information under applicable data protection laws and regulations).

13.7. “Services” or “Service” means the hosted customer experience solutions identified in an Order Form, and any modifications periodically made by ClickDimensions.

13.8. “Subscription Term” means the period of time during which ClickDimensions is required to provide Customer with the Services.