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# G-Cloud 12 Call-Off Contract

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

G-Cloud 12 Call-Off Contract 1

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## Part A: Order Form

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

|  |  |
| --- | --- |
| **Digital Marketplace service ID number** | 6437 3501 9422 808 |
| **Call-Off Contract reference** | Prj\_66 |
| **Call-Off Contract title** | Provision of Support, Maintenance and Enhancements related to the Regulated Professions Register (RPR) |
| **Call-Off Contract description** | This Call-Off Contract is for the provision of support, maintenance and enhancement services for the RPR, a web-based platform that is the single online source of information on regulated professions in the UK.The Supplier under this Call-Off Contract will provide Level 2 and Level 3 software support, as well as:* Incident management
* Application management
* Service reporting
* Knowledge management
* Security management.

Full details of the Services are found in Schedule 1. |
| **Start date** | 23/05/2022 |
| **Expiry date** | 22/05/2024 (excluding extension options) |
| **Call-Off Contract value** | £576,400 (excluding VAT, including all three years (2 year initial term plus extension options) as well as any additional work agreed in accordance with the terms of this Contract) |
| **Charging method** | Payment via BACS, monthly in arrears. See Schedule 2 for full detail. |
| **Purchase order number** | To be provided to the Supplier as soon as possible following execution of the Contract. |

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

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

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

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

|  |  |
| --- | --- |
| **From the Buyer** | The Department for Business, Energy, and Industrial Strategy on behalf of the Secretary of State for Business, Energy and Industrial Strategy. (‘BEIS’).1 Victoria StreetLondonSW1H 0ET |
| **To the Supplier** | CGI IT UK LIMITED (‘CGI’)20 Fenchurch Street14th Floor, LondonEC3M 3BYCompany number: **00947968** |
| **Together the ‘Parties’** |

### Principal contact details

**For the Buyer:**

Title: [Redacted]

Name: [Redacted]

Email: [Redacted]

Phone: [Redacted]

**For the Supplier:**

Title: [Redacted]

Name: [Redacted]

Email: [Redacted]

Phone: [Redacted]

### Call-Off Contract term

|  |  |
| --- | --- |
| **Start date**  | This Call-Off Contract Starts on **the date of execution** and is valid for **a period of 24 (twenty-four) months.** |
| **Ending (termination)** | 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).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). |
| **Extension period** | This Call-off Contract can be extended by the Buyer for **1** (**one)** period of up to 12 (twelve) months, by giving the Supplier **one (1) month’s** written notice before its expiry. The extension periods are subject to clauses 1.3 and 1.4 in Part B below.Extensions which extend the Term beyond 24 months are only permitted if the Supplier complies with the additional exit plan requirements at clauses 21.3 to 21.8. |

### Buyer contractual details

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

|  |  |
| --- | --- |
| **G-Cloud lot** | This Call-Off Contract is for the provision of Services under:* Lot 3: Cloud support
 |
| **G-Cloud services required** | The Services to be provided by the Supplier under the above Lot are listed in Framework Section 2 and fully detailed in Schedule 1. |
| **Additional Services** | Additional Services related to the provision of the Services may be agreed in accordance with the variation process and with reference to the Supplier’s G-Cloud 12 rate card. |
| **Location** | The Services will be delivered remotely, not using Buyer premises.Data will be stored within the United Kingdom. |
| **Quality standards** | The quality standards required for this Call-Off Contract are detailed in Schedule 1. |  |
| **Technical standards:** | Not applicable |  |
| **Service level agreement:** | The service level and availability criteria required for this Call-Off Contract are detailed in Schedule 1 and in the Supplier’s Service Description information. |  |
| **Onboarding** | The onboarding plan for this Call-Off Contract isincluded within Schedule 1. |  |
| **Offboarding** | The offboarding plan for this Call-Off Contract is to be agreed no later than three months prior to the expiry date. In the event of termination for any reason, the Parties shall work together promptly to agree an offboarding plan as soon as possible following notice being served.Any offboarding and Exit activity will be chargeable to the Buyer using the SFIA Daily Rate Card set-out in Schedule 2 (Call-Off Contract Charges) of this Call-Off Contract |  |
| **Collaboration agreement** | Not required. |  |
| **Limit on Parties’ liability** | The annual total liability of either Party for all Property defaults will not exceed [Redacted].The annual total liability for Buyer Data Defaults will not exceed [Redacted]of the Charges payable by the Buyer to the Supplier in the Year the claim arises. Where a claim arises part way through the Year, the Charges payable for the purposes of this calculation will be based on a reasonable estimate for the entire 12 month period.The annual total liability for all other Defaults will not exceed [Redacted]of the Charges payable by the Buyer to the Supplier in the Year the claim arises. Where a claim arises part way through the Year, the Charges payable for the purposes of this calculation will be based on a reasonable estimate for the entire 12 month period. |  |
| **Insurance** | The insurance(s) required will be:* 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 [Redacted] for each individual claim or any higher limit the Buyer requires (and as required by Law)
* employers' liability insurance with a minimum limit of [Redacted] or any higher minimum limit required by Law
 |  |
| **Force majeure** | A Party may End this Call-Off Contract if the Other Party is affected by a Force Majeure Event that lasts for more than 45 consecutive days.  |  |
| **Audit** | The following Framework Agreement audit provisions will be incorporated under clause 2.1 of this Call-Off Contract to enable the Buyer to carry out audits:7.8 to 7.13 inclusive. |  |
| **Buyer’s responsibilities** | The Buyer’s responsibilities are as set out in Schedule 1. |  |
| **Buyer’s equipment** | All relevant information is set out in Schedule 1. |  |

### Supplier’s information

|  |  |
| --- | --- |
| **Subcontractors or partners** | N/A |

### 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 **bank transfer.** |
| **Payment profile** | The payment profile for this Call-Off Contract is **monthly** in arrears. |
| **Invoice details** | The Supplier will issue electronic invoices **monthly** in arrears. The Buyer will pay the Supplier within **30** days of receipt of a valid invoice. |
| **Who and where to send invoices to** | Invoices will be sent to Thomas Corker at the details listed above. |
| **Invoice information required**  | All invoices must include the Purchase Order number and contract reference. |
| **Invoice frequency** | Invoice will be sent to the Buyer monthly. |
| **Call-Off Contract value** | The total value of this Call-Off Contract is £576,400, including extension options. |
| **Call-Off Contract charges** | The breakdown of the Charges is contained within Schedule 2. |

### Additional Buyer terms

|  |  |
| --- | --- |
| **Performance of the Service and Deliverables** | This information is contained within Schedule 1. |
| **Guarantee** | Not required. |
| **Warranties, representations** | Contained within the incorporated Framework Agreement clause 4.1. |
| **Supplemental requirements in addition to the Call-Off terms** | Not used. |
| **Alternative clauses** | Not used. |
| **Buyer specific amendments to/refinements of the Call-Off Contract terms** | **Contractual Change Control Process**Either party may issue a change request to the other party at any time during the Term. The change request shall be substantially in the form of Appendix 1 to Schedule 1.If the Supplier issued the change request, then it shall also provide a rough order of magnitude (ROM) impact assessment to the Buyer, unless confirmed as not required by the Buyer, as soon as is reasonably practicable but in any event within 5 Working Days of the date of issuing the change request.If the Buyer issued the change request, then the Supplier shall provide a ROM impact assessment to the Buyer as soon as is reasonably practicable but in any event within 5 Working Days of the date of receiving the change request from the Buyer provided that if the Supplier requires any clarifications in relation to the change request before it can deliver the ROM impact assessment, then it will promptly notify the Buyer and the time period shall be extended by the time taken by the Buyer to provide those clarifications. The ROM may indicate a full impact assessment is required. If so, the Parties will agree a fee, using the Rate Card in Schedule 2, for the compilation of the full impact assessment. Once agreed, the full impact assessment shall be provided within 10 Working Days.The Parties will then work together to agree the substantive form of the change request. If it cannot be agreed, the Contract is otherwise unaffected.Any proposed contract change processed in accordance with this process will not be authorised and the Supplier shall not implement any proposed contract change until the pro forma is signed and executed by a duly authorised representative of the Buyer. The Supplier shall not be entitled to charge the Buyer for any work necessary as part of agreeing a change to the Contract prior to the compilation of a full impact assessment.Technical or Functional changes to the Regulated Professions Register will be managed via Service Request Process. Documentation of agreed changes will take the form of Annex 1 to Schedule 1.**Service Request Process**See Annex 2 of Schedule 1In respect to release management, the process will be agreed on a case by case basis as required. This will require clearance via the BEIS Operational Change and Release Board (OCRB). |
| **Public Services Network (PSN)** | N/A |
| **Personal Data and Data Subjects** | Confirm whether Annex 1 (and Annex 2, if applicable) of Schedule 7 is being used: Not Applicable. There will be no Personal Data processed as part of this Call-off Contract, accordingly the Buyer undertakes that Personal Data will not be made available to the Supplier in performing its obligations under this Call-Off Contract |

### 1. Formation of contract

1.1 By signing and returning this Order Form (Part A), the Supplier agrees to enter into a Call-Off Contract with the Buyer.

1.2 The Parties agree that they have read the Order Form (Part A) and the Call-Off Contract terms and by signing below agree to be bound by this Call-Off Contract.

1.3 This Call-Off Contract will be formed when the Buyer acknowledges receipt of the signed copy of the Order Form from the Supplier.

1.4 In cases of any ambiguity or conflict, the terms and conditions of the Call-Off Contract (Part B) and Order Form (Part A) will supersede those of the Supplier Terms and Conditions as per the order of precedence set out in clause 8.3 of the Framework Agreement.

### 2. Background to the agreement

2.1 The Supplier is a provider of G-Cloud Services and agreed to provide the Services under the terms of Framework Agreement number RM1557.12.

2.2 The Buyer provided an Order Form for Services to the Supplier.

|  |  |  |
| --- | --- | --- |
| **Signed** | **Supplier** | **Buyer** |
| **Name** | [Redacted] | [Redacted] |
| **Title** | [Redacted] | [Redacted] |
| **Signature** | [Redacted] | [Redacted] |
| **Date** | 23/05/22 | 23/05/22 |

## Schedule 1: Services Description

In conjunction with the Supplier’s G Cloud Service Offering document under service ID 6437 3501 9422 808, and their response to clarifications dated 25/04/2022 and at Annex 3 of this Schedule 1, this Schedule sets out the detail of the Services the Supplier shall provide to the Buyer under this Contract:



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| --- |
|  |

# Background

The Regulated Professions Register (RPR) service is created to replace the UK's previous membership in the EU's Regulated Professions Database, which lapsed at the end of the Transition Period. The service will provide a single, digital register of all regulated professions (e.g. architect, nurse), whether regulated in law or on a voluntary basis, and their relevant regulators/professional bodies across the UK. During the passage of the Professional Qualifications Bill, ministers have committed that BEIS will maintain an up-to-date list of professions regulated by law and their regulators. The RPR database will become the means through which this list is kept up to date.

The Regulated Professions Register Application (the “Application”) is a web-based platform for BEIS Policy team to provide support on initial onboarding of users, an authenticated Regulator user base (estimated at around 180 organisations ) and an outward facing open Public User ‘search’ capability. The users for their needs for the service are described below.

* **Professional/Public user** - need to search the register to see if a profession is regulated in the UK, the basis on which it is regulated, and the qualification requirements if so.
* **UK Regulatory Authority user** - need to update their information including practise and qualification requirements of the professions they regulate so that professionals can find details of their profession easily.
* **National administrator user** - need to support regulators with updating their details and check any information entered in the system. They also need to access information on the register to provide responses to public enquiries about regulated professions and regulators.
* **BEIS Policy /analyst user** - need to create records and user accounts for new regulators and professions so that I can ensure their details, information and data are entered and published. Reporting functionalities will enable BEIS to have access to information about regulated professionals to inform policy and analytical needs.

# Scope

The service is under development by a third party supplier, DXW. Prior to Application take-on, BEIS have confirmed that the Application and Hosting Platform will meet all requirements outlined in this Schedule 1 Services Description.

The RPR service is a web-based service with a BEIS internal support and administration user base, an authenticated Regulatory Authority/Professional body user base and an outward facing open Public User ‘search’ capability (not authenticated).

This Call-Off Contract is for services in respect of L2, 3 and 4 platform/software support (bug fixes) and maintenance plus software enhancement. The Supplier will provide support and maintenance services for the Application and service management for the Hosting Platform.

It is expected that L1 support will be provided by BEIS Policy Support team, where the national admin function currently sits.

The procurement is for a period of 2+1 years, with BEIS reserving the right of early termination in accordance with the terms of the Call-Off Contract.

# Technical Overview

Hosting Platform: The Application is run on GOV.UK PaaS, and all authenticated users log in using two factor authentication. The Application will be hosted on GOV.UK PaaS within a BEIS Subdomain and via a GOV.UK Landing Page and registered to a service specific sub-domain. BEIS own the relationship with GDS for GOV.UK PaaS and will procure the required Hosting Platform..

## Technical Architecture Diagrams.

[Redacted]

[Redacted]

[Redacted]

## Integrations

* Auth0 (authentication)
* GOV.UK Notify (emails)
* Plausible (cookie-free analytics)
* Papertrail (logging)
* Rollbar (error reporting)
* Updown.io (Monitoring)
* Github Actions (Deployment and CI)
* GOV.UK PaaS (Hosting)
* Dockerhub (Docker image storage)

# Services

## Service Acceptance and Transition Implementation Plan

The Supplier will provide a Transition Implementation Plan to move BEIS from the current service to the proposed Service. The Transition Implementation Plan will describe all required aspects to achieve Service Acceptance, including Knowledge Transfer, Application verification, BEIS user acceptance, Service baselining. It will define the proposed timeline with supporting plan, governance, resources, requirements of the current supplier, documentation, data transfer and dependencies on BEIS.

## Network & Server Infrastructure

The Supplier will maintain a secure service in accordance with the National Cyber Security Centre ([NCSC) Security Design Principles](https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main). This includes maintaining segmented and layered network architectures and comprehensive protective monitoring solutions, that will have been delivered prior to Application take-on and will be fulfilled through the use of the GOV.UK PaaS hosting infrastructure. The Service Supplier will comply with Government Digital Service (GDS) Support Service Standards

The Supplier will maintain the solution which mitigate the security risks for an internet facing web service. The Supplier will produce a risk assessment which describes the procedural, technical and physical controls implemented, and how any security vulnerabilities have been mitigated.

The Supplier shall monitor 3rd party solution components.

 The Supplier shall provide a threat assessment for the Service to ensure that the Service is compliant with NCSC [Cloud Security Principles.](https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles) This assessment will be reviewed on an annual basis or if there is a major incident or change to infrastructure, processes and procedures.

The Supplier shall be ISO27001:2013 certified.

## BEIS Regulated Professions Register Client Specific

### User Population

The internal users can be active 24 hours a day, 365 days a year, from BEIS offices, Regulatory Authorities/Professional bodies and remotely.

The Public User search facility is web accessed 24 hours a day, 365 days a year.

The Service shall support up to 1,000 registered users, 100 concurrent users (normal load), 170 concurrent users (peak load).

The Service shall support up to 10,000 concurrent service items.

Note. BEIS (Users) Internal BEIS team access the Application via secure (Zscaler and OKTA protected) end user devices via the BEIS internal network. Regulators and Professional bodies will use their own security protection methods with BEIS National admin team maintaining multi-level security control.

### Environments

Required Client End User environments are:

* Production (Active) - Backup of the system should support the identified Recovery Point Objective (RPO) 1 Hour, meaning that the business will accept losing up to a maximum of 1 hour of data in the event of a major disaster or incident occurring
* Pre-Production (Staging)

The Supplier shall ensure that further environments can be made available at the request BEIS and within the provisions of the Call Off Agreement.

All other hardware, software except development and test environments needed by the Supplier to undertake BEIS systems further development, maintenance and support shall be provided by the Supplier including required licencing. BEIS Digital will continue to cater for all cost with regards to Hosting Platform (GOV.UK PaaS).



Disaster Recovery

The Application will be recoverable within the up-time frames of the Total Outage SLA subject to the relevant Hosting Platform being available to the Supplier.

### Operational Data

* Data to be retained within the Production environments for up to 7 years - archival rules to be provided by BEIS Digital along with the provision of the required storage
* Annual data volumes of 10GB
* Archived retention of up to 7yrs
* Production back-ups taken daily and retained for 7 days

### Maintenance

The Supplier shall provide a maintenance schedule in accordance with this Call-Off Contract with 3rd party software releases/patches applied as advised by the 3rd party suppliers within the scope of the Service. The Supplier will proactively monitor the vulnerability of RPR service and demonstrate the ability to ensure all necessary patches and upgrades are applied to maintain security, integrity and availability in accordance with the [Cloud Security Principles](https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles).

Maintenance activities shall only be carried out by the Supplier following agreement with BEIS, auditable through the BEIS Supplier’s change management vehicle.

## Service Wrap

The Supplier will provide an integrated service encompassing Support & Maintenance and future development of the RPR service in accordance with an ITIL v4 Service Wrap. Specific components of the Service Wrap include:

|  |  |  |  |
| --- | --- | --- | --- |
| Service Design | Service Transition | Service Operation | Service Improvement |
| Capacity ManagementAvailability ManagementContinuity ManagementInformation Security Mgt. | Change ManagementConfiguration ManagementRelease / Deployment Mgt.Service Validation/Testing | Event ManagementIncident ManagementRequest FulfilmentProblem Management | Service MonitoringService ReportingService Level Compliance |

Within the Service Wrap the Supplier shall monitor the RPR service continuity and performance to at least meet the Service Level targets. Each month the Supplier shall provide BEIS with a Performance Monitoring Report detailing the level of service which was achieved for the Service Period. Service Reviews will be conducted in line with agreed Service Periods with any remedial actions undertaken to timeframes set out within the Service Contract.

## Service Provision

The Supplier shall provide the Service using suitably experienced and qualified personnel. As a minimum, all staff must be vetted with the Baseline Personnel Security Standard. All Supplier staff must complete the personnel security controls that are described in the [Baseline Personnel Security Standard](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/365602/HMG_Baseline_Personnel_Security_Standard.pdf) before commencing work.

Supplier staff who will have access to BEIS live data (classified as Official Personal data), must be security screened to BPSS level.

The Supplier shall provide named (and separate) Project Management and Service Relationship Management resource.

## Business Continuity and Disaster Recovery planning

The Supplier will validate, maintain and test business continuity and disaster recovery plan(s) and ensure that BEIS is aware of these plans and informed when changes are made.

## Security

### Purpose

BEIS has a duty to government, regulated organisations, the public and its own employees, to ensure that access to information is controlled and managed appropriately. The aim is to establish mechanisms and standards for the secure storage and protection of information.

The Service will be provided in accordance with GDS/NCSC Security standards and be subjected to annual independent penetration testing commissioned as required by BEIS.

The Parties will agree in writing a Security Aspects Letter (SAL) to comply with BEIS security requirements.

### Security Designation

The nature of RPR data to be managed within the BEIS services falls within the Government Security Classification (2014) of ‘Official’ with a sub definition of ‘Personal’

### Storage of data

The RPR Data information will be stored within the United Kingdom. Exceptions can be made if it can be judged the risk is negligible in storing the data outside the UK with sign off at BEIS Director level.

## NCSC Cloud Security Principles

BEIS use all GCHQ NCSC guidance that relates to cloud-based solutions. The RPR Service will comply with the following:

### Data in transit protection

*User data transiting networks should be adequately protected against tampering and eavesdropping.*

### Asset protection and resilience

*User data, and the assets storing or processing it, should be protected against physical tampering, loss, damage, or seizure.* With respect to this element of the *Service, the Supplier will:*

* Be able to state where information will be stored and processed, including all snapshots, backups, exports, and replicated data, to the extent that this information is made available by GOV.UK PaaS to the Supplier.
* Store BEIS information on Supplier provided platform within the United Kingdom.
* May not use BEIS information for any purpose other than to provide RPR Services to BEIS.
* Assure BEIS that an adequate form of data encryption is employed to ensure that no data is written to disk in an unencrypted form. They must manage cryptographic keys in accordance with Government standard IS4. The Supplier will maintain the Application in this respect to the extent that can be achieved using GOV.UK PaaS.

### Separation between users

*A malicious or compromised user of the RPR Service should not be able to affect the service or data of another.* *In this respect the Supplier must support the following,* to the extent that can be supported using GOV.UK PaaS as a Hosting Platform*:*

* Provide evidence of sufficient separation of data from other users of the service.
* Undergo penetration testing of its services as required by BEIS and implement remediations found necessary as a result of such testing.
* Undertake security reviews of the design of the services and adopt an engineering approach that ensures security is a key consideration in developing the services.
* If required by BEIS, complete Data Protection Impact Assessments on an annual basis.

## Governance framework

*The Supplier should have a security governance framework and policy(s) which coordinates and directs its management of the service and information within it. These should include but are not exclusive to:*

• Operational security

• Personnel security

• Secure development

• Supply chain security

• Secure user management

• Identity and authentication

• External interface protection

• Secure service administration

• Audit information for users

• Secure use of the service

BEIS will require sight of these items together and before agreement to the Security Aspects Letter (SAL) to assure itself of a) adequacy of security governance and policies and b) adherence to and maintenance (currency) within the Supplier organisation.

# Enhancements

The Supplier will have resource availability, both in terms of bandwidth and competency, to support BEIS’s forward programme of development for the RPR Service. Indicative enhancement intentions will be shared by BEIS on an annual basis.

BEIS will maintain a backlog of future enhancements to the RPR Service which are required to be developed, delivered, and supported by the Supplier in accordance with the Contractual Change Control Process defined in the Order Form. The Supplier shall be responsible for system test, regression testing, integration testing and performance testing of all such changes in accordance with test plans to be agreed with BEIS. BEIS will perform user acceptance testing.

The Supplier will be required to provide an Impact Assessment of proposed changes and enhancements to the RPR Service within an agreed end to end development process, to templated output and quality assurance standards. The Supplier shall provide each Impact Assessment together with a costed quotation and time-specified delivery proposal.

Work will be commissioned through statements of work agreed between the Parties and contracted for under the Call-Off Contract. Charges shall be calculated against the Supplier’s rate card and normally fixed price in accordance with the Supplier’s estimate of resources required to deliver.

This enhancement process will be stated within each Enhancement Work Package and agreed with the Supplier in line with the BEIS/GDS Agile Digital delivery framework. It will be incorporated into the Service Wrap and be subject to the Supplier’s performance reporting and periodic Service Reviews.

# Appendix 1. SLA and OLA Principles

Service and Operational Level Agreements (SLAs and OLAs) are included within this Call-Off Contract. The SLAs and OLAs reflect BEIS’s business impact criteria for categorising and prioritising service failures. Assessment of delivered performance v SLAs will be made within the Service Reviews to be held at the completion of each Service Period.

|  |  |
| --- | --- |
| **ID** | **SLA** |
| 1 | Core Support hours shall be within the hours of 0900 - 1700 UK time on Working Days Monday to Friday only. For the avoidance of doubt, for the purposes of calculating Response Times and Resolution Times, measurement of the times shall stop at 17:00 hours on a Working Day and shall resume at 09:00 hours on the next Working Day |
| 2 | The Supplier will proactively monitor server load and disk space and ensure optimal site running during Core Support hours. If issues are identified with site performance, then the Supplier will make BEIS aware of these at the earliest opportunity and take appropriate action in agreement with BEIS to restore optimal site performance. |
| 3 | The Supplier shall triage, respond to and resolve all tickets raised to second-line support by phone or email, according to prioritisation in the table below. |
|  |

| **Priority** | **Description** | **Response Target** | **Resolution Target** |  |
| --- | --- | --- | --- | --- |
| 1 | * Total Loss of System
* Security Breach
* Critical Functionality Unavailable or Incorrect
* Critical Business Process cannot be completed
 | 30 Minutes | 4 Hours | 1. All Response Target times and Resolution Target times are based on the Support Service Hours. Any overtime hours worked will be subject to prior written approval from Buyer.
2. All Incidents and requests will initially be raised via the Buyer service desk and will be assigned to Supplier as a resolution group.
3. SLA targets are only applicable to Incidents where the cause of the incident is shown to be within the scope of Regulated Professions Register Service provided by the Supplier under this Call-Off Contract. Supplier SLA reporting will therefore treat Incidents where the cause is outside the scope of the Regulated Professions Register Service as Exemption Incidents, they will however still be counted as Incidents from an Incident count perspective.
4. The Supplier SLA clock will be stopped once the Supplier has passed the incident back to the Buyer or a third party (pending a response from the Buyer or a third party, e.g. BEIS Digital or a third party provider). During this period the incident status will be set to *Pending*. The SLA clock will be restarted once the required response has been provided back to Supplier, and the incident status returned to *In Progress*.
5. The Supplier SLA clock will be stopped when either a Permanent Fix or a Workaround has been provided and normal service restored. At this point, the Supplier Incident status will be set to *Resolved*. If the workaround is unsuccessful, then the SLA clock will be restarted, and the incident status returned to *In Progress.*
6. Any workaround will be agreed between the Parties and, the Buyer will not unreasonably withhold their approval of the workaround. A Problem ticket will be raised documenting the issue and detailing the workaround that has been applied. Any further or longer term, complete fix will be progressed against the Problem ticket or, alternatively, the workaround would remain in place on agreement from the Buyer.
7. In terms of third-parties, if they are contracted via Supplier, they are essentially part of the Supplier so the same rules apply to the SLA if the ticket was with a Supplier team. If an Incident is assigned to a third-party supplier not contracted to the Supplier, the Supplier SLA clock will be stopped, and the Supplier Incident status set to *Pending*. If the Incident is re-assigned back to the Supplier then the SLA clock will be restarted and the Incident status set back to *In Progress*.
8. When the Buyer has agreed that an Incident has been resolved successfully, the Incident status will be set to *Closed*.
 |
| 2 | * Partial loss of access to system
* Critical functionality not working to specification, but a workaround is available
* Important requirement is not available. There may be a workaround.
* Serious usability issues for users
* Integrity of the application is brought into question
* Compromised data integrity / accuracy
* High rate of defect occurrence in application processing
 | 1 Hour | 2 Days |
| 3 | * Requirement has not been delivered as expected, but a workaround is available
* General usability issues e.g. screen sizing incorrect, truncated text, incorrect defaults, report formats - but can be manually altered so that it is usable
*  Minor errors but system still operates
 | 4 Hours | 5 Days |
| 4 | Low impact and not a significant concernCosmetic issues e.g. spelling mistakes,incorrect background/text colourNot affecting the functional operation of thesystemScreen layout incorrectField sizes inappropriateHelp text incorrect | 8 Hours | Scheduled Release |

 |
| 4 | The Supplier will respond to and resolve site-wide incidents, or incidents affecting business critical areas of the BEIS system . Critical incidents must be reported with 30 minutes and resolved within 4 hours.  |
| 5 | The Supplier will ensure that, for the elements of the Application and Hosting Platform over which the Supplier has full management control, the RPR Service is available 99.95% of time during Core Support hours and will provide monthly reporting to demonstrate BEIS system uptime and availability. Outside of Core Support hours the BEIS system shall remain available for use by BEIS except during periods of planned maintenance of which prior notice is given to BEIS. |
| 6 | Where downtime or site performance is likely to be impacted, the Supplier shall ensure that BEIS is made aware of the impact a minimum of 3 working days before a change is to be implemented. All changes that could potentially impact BEIS system performance must take place outside-of-Core Support hours and in agreement with BEIS. Such changes should not impact BEIS critical processing periods. |
| 7 | The Supplier will cooperate in the running of an annual penetration test and retest with a CHECK or Crest accredited Supplier appointed by BEIS. The Supplier will be responsible for fixing security issues identified in penetration testing within 6 weeks of the test. A retest will be required within 1 month of the changes being implemented.  |

|  |  |  |
| --- | --- | --- |
| **ID** | **Operational Level Agreements (OLA) –**  **Non-Exhaustive** |  |
| 1 | The Supplier has clearly documented Business Continuity plans, including out of hours arrangements.  | The Supplier will supply business continuity documentation and update on the status of business continuity plans as part of the Service.  |
| 2 | The Supplier has clearly documented Disaster Recovery arrangements, including out of hours support. | The Supplier will be asked to supply disaster recovery documentation and update on the status of disaster recovery plans as part of ongoing Service management. |
| 3 | The Supplier will maintain a security risk register to be shared with BEIS and provide a qualified named person as security contact. | The Supplier will maintain a security risk register and update on security and data risk as part of ongoing Service management. |
| 4 | The Supplier will maintain and share a finance tracker showing all invoicing amounts related to specific Statements of Work, Contract Change Notices and Purchase order numbers and rate of spend.  | The Supplier will be asked to supply a finance tracker and update on the financial spend as part of ongoing Service management. |

**Annex 1 to Schedule 1 – Variation Form Template**

No of Call Off Order Form being varied:

Variation Form No:

**BETWEEN**:

The Department for Business, Energy and Industrial Strategy ("the Customer")

and

[x] ("the Supplier")

(Together “the Parties”)

1. **This Call Off Contract is varied as follows**:
2. Words and expressions in this Variation shall have the meanings given to them in this Call Off Contract.
3. This Call Off Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Customer:

Signature

Date

Name (in Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Supplier:

Signature

Date

Name (in Capitals)

Address

 **Annex 2 to Schedule 1 – Service Request Process**

## Summary

Service requests are generally small, low risk and include the following:

* Request for information
* Request for advice
* A standard change
* Access to a service
* Request for a quote

Service requests are logged by the policy support team on agreed tool. The support team assigned a unique reference number, then is assigned to the most appropriate member of the support team to process the service request, in agreement with the analyst. An email is then sent to the customer by the supplier team advising them of their unique reference number and details of who is handling their request.

Service request procedures are held under configuration control in the application project libraries. These are created for activities that may be repeatedly performed, and where a procedure will improve consistency of the action performed. Once the procedure has been correctly implemented the service request can be closed.

It may be that the application is working according to current specifications but the customer is requesting a change. The Service Request process may be followed for minor cosmetic changes to an existing application but major enhancements are likely to be handled as separate projects, as optional services, outside the standard support process.

## Introduction

A Service Request is a request from a user for information or advice, a standard change, or access to an IT service. It should require a small amount of effort, it should be low risk, pre-authorised and preferably listed in the service catalogue. Larger and riskier pieces of work are managed through the Change Management Process.

## Objective

The objective of the Service Request Process is to enable users to request and receive standard services without the need to go through the full incident and change process. A Service Request is defined as a request for advice or information, a standard pre-authorised change or access to an IT service.

## Scope

The scope of this process is as set out in the ‘Objective’ section above. For the avoidance of doubt, advice, information or support in relation to any of the following shall be out of scope of this process and is included within the fixed monthly charge as detailed in Schedule 2 of the Contract:

* Incident Management
* Application Management
* Service Reporting
* Knowledge Management
* Capacity Management

## Context

Service Requests are initiated by the customer and then processed by the support team. The majority of small service requests will be pre-approved but if not then the change will need to be approved in Change Management.

A history of service requests is passed to Service management for reporting.

The diagram below shows these interactions graphically.



## Service Request Process

The event which initiates the process is the receipt of a Service Request from a user, through the service portal or by email or telephone. The request will be logged and managed to contractual Service Level Agreement (SLA) in the service desk system.

The service team carry out the change or provide the advice and close the service request when approved by the user. The table below gives the step by step description of the process:

| Request Fulfilment – step by step description |
| --- |
| Title | Description |
| Call Logging | Requests will be made to the Support team via email, phone call, or the service desk web portal. Once a request is logged an automatic email is generated informing the caller of their reference number. (Requests logged manually by a support analyst after receiving a phone call or email will have a status of ‘Accepted’.) |
| Valid Request? | Requests logged via the service desk web portal need to be validated by a support analyst. If the request is valid then the analyst sets the request status to ‘Accepted’ in the service desk tool and it is progressed. If it is not a valid request then the caller is informed and the request is closed. |
| Discuss request with caller | If it is not a valid request, the analyst will contact the caller and discuss the requirements. If appropriate, details of the request may be passed back to the originating Helpdesk. If the call is confirmed to be outside the scope of the support service it will be closed. If the caller has provided further information and it is possible to proceed, the request will now be accepted |
| Request assigned to analyst or analyst takes ownershipStatus = IN PROGRESS | The requests should be assigned to an analyst before any further actions are carried out. This makes the analyst the ‘Owner’ of the request. This can be done by the analyst themselves or by someone else, e.g. duty analyst. |
| Charging Required? | If charging is required then refer to ‘calculate the costs/analysis time’ otherwise move onto the next stage ‘approval required?’ If charging is required then by default, approval is required.Where standard service requests are documented in specific procedure documents, the document will describe the charging and approval processes applicable. |
| Calculate costs / Analysis time | Record the calculated the costs and/or further analysis time for carrying out the work. |
| Approval required? | If approval is required then refer to ‘Request Approval’ otherwise move onto the next stage ‘procurement required?’ |
| Request approval. Status = APPROVAL | Request approval from the appropriate person and record this is in the service desk tool |
| Approved? | If the request is approved then move onto the next stage ‘procurement required?’. If the request is not approved then this is noted in the service desk tool and the request is closed |
| Information Required from Caller | The status should be set ‘pending’ and the clock stopped in the service desk tool when waiting on information from the caller. |
| Information Received | Once the information has been received from the caller the request should be assigned back to the relevant person in the service desk tool and the SLA clock started.  |
| Implementation | Implement/provide to caller. Once the request has been implemented or provided then the status should be set to ‘Resolved’. The SLA clock should then be stopped (this is automatic the service desk tool) |
| Caller agrees to close? | The request should not be closed until the request has been fulfilled to the callers’ satisfaction. If the caller is satisfied and agrees to close then the request can be closed in the service desk tool. If the caller does not agree to close then it will need to be assigned to an analyst so further investigation can be carried out |
| Status = IN PROGRESS | The request is assigned to an analyst in the service desk tool and the SLA clock should be restarted |
| Request ClosedStatus = CLOSED | The request is closed in the service desk tool. |

## Key Performance Indicators

The following metrics are indicators of the health of the Request Fulfilment process:

* Percentage of requests resolved within contractual SLA – this should be high and increasing as the service develops
* Customer satisfaction with Request Fulfilment – should be high and increasing

## Accountability and Review

The Service Review Boards are accountable for the operation and regular review of the application of this process to each service.

## **Annex 3 to Schedule 1 – Clarification Question Responses**

This Annex includes the Supplier’s responses to Clarification Questions posed as part of the GCloud evaluation activity. The responses provided are included verbatim here, in line with the practice of embedding a supplier proposal within a normal contract. The information is provided for information and does not define any additional obligations for the Supplier. Should there be any conflict between the Services Description described in all other elements of Schedule 1 and this Annex 3, then the other elements of Schedule 1 will take precedence.

# Clarification questions

### A*) Can you, with reference to prior experience implementing solutions which mitigate internet facing web service security risks, explain how this will be managed for these requirements?*

Our overriding security principle is to operate solutions to a 'least privilege' access approach, regardless of environment or operation. This ensures that security is baked in and not bolted on as an afterthought. We design solutions to be built with layers of security such that, if a layer is bypassed, an intruder cannot gain deeper access into the solution without challenge.

Examples of secure internet-facing web services that we have delivered include:

* [Redacted] – a secure web-based API and user interface to support reporting of [Redacted] movements in England by markets, [Redacted] with 200,000 registered holdings generating 300,000 requests per month.
* [Redacted]- a secure online service to enable citizens to respond digitally to [Redacted]. Launched on GOV.UK in April 2020, over 400,000 citizens have used the service.
* [Redacted]- an open data portal for the [Redacted]. It provides a shared platform to citizens and public authorities, enabling information to be shared in a common format. It is hosted in a client-owned [Redacted] tenancy and supports secure user authentication including multi-factor authentication (MFA).

Our security architects apply security frameworks such as the [Redacted] supported by the CGI Responsive Collaborative approach to Digital Architecture (RCDA) to build in security and privacy by design. We align these frameworks to government guidance including NCSC and Technology Code of Practice. We use Open Web Application Security Project (OWASP) best practices to develop solutions that are resilient to threats. We typically establish automated application delivery toolchains to continually monitor vulnerabilities as part of our design.

From a delivery perspective, we use Infrastructure as Code and tooling to orchestrate environment builds. To ensure no links between environments, we use [Redacted]to ensure all sensitive environment metadata is protected and to avoid persisting hardcoded environment security values.

During transition for the RPR service, we will analyse existing security risk assessments and re-assess as required to fully establish the risk baseline. We will evaluate the current solution design, application code, development toolchain, deployment configuration and technical controls against the risk assessment and security principles described above to identify recommended remedial actions. Where these cannot be completed during the transition phase, we will agree an action plan with you.

## Maintenance and support service requirements

### *1)* *How do you approach locating system vulnerabilities, and how do you determine which patches and upgrades are required to maintain security, integrity and availability of the service?*

During transition we will evaluate the current set-up of the RPR development toolchain and environment configuration. We will be working towards a multi-layer approach to provide security in depth. Considerations for layers of managing vulnerabilities include:

1) Static code analysis identifying common application coding errors that might introduce security vulnerabilities. Examples include SQL ingestion errors or un-sanitised logging of user input. The OWASP Top 10 is a good profile to apply, plus standard code quality profiles that would identify unreachable code, resource leaks, etc. Quality gates can be set in the development pipeline to automatically block code that contains vulnerabilities.

2) Library vulnerability analysis. This process would identify and classify library versions that contain known CVEs (Common Vulnerabilities and Exposures). The process can automatically raise tickets for investigation and, in some cases, automatically define an upgrade route to address the CVE. The build process can be configured to block CVEs.

3) Container analysis. This process would scan built containers containing application code and also report on CVEs. This safeguard can then be included in the build process and can block builds with specified vulnerabilities.

To support the above layers a continuous integration pipeline is required. We will assess what is in place with the existing Github Actions-based pipelines. We would recommend Sonarqube, BlackDuck, Whitesource or Snyk as options for further discussion.

As an example, [Redacted]

### *2) Can the service support 1,000 registered users, 100 concurrent users during normal loads, 170 concurrent users during peak loads, and support 10,000 concurrent service items at one time?*

We have experience of providing support and development services for applications of this scale and significantly higher. For example, the [Redacted] web-based registry supports over 800 concurrent users with over 2,000 registered users. The solution achieved 100% availability even when peak loads were double the original estimates for concurrent usage. The [Redacted] has been tested with over 1,200 concurrent users and supports 1.5m movement items per month.

You have indicated that the application is already expected to meet stated requirements. From an initial view of the architecture, the service should be able to scale horizontally which would be essential for availability and performance.

During transition we will review existing performance testing and results. It is recommended that load testing be developed using JMeter (or similar) to exercise the application in a pattern representative of normal usage. This would benchmark normal load, peak load and see how the application performs as load is increased. The application should behave in a predictable manner up to specified peak load with performance possibly degrading beyond this in a controlled manner.

### *3) Can you provide more information around the DevOps approach? How is the automation process managed within a service, especially around deployment to enable cost reduction?*

Our DevOps approach is based on automation to increase speed of deployment to production. Faster deployments facilitate smaller incremental changes, reducing technical risk and maintenance costs. It can also allow experimentation, e.g. A/B testing, feature flags.

The automation process is managed to improve code quality, testability, and security governance - reducing manual processes to complete release from development to production. As an example, the [Redacted]project uses an automated Jenkins CI (Continuous Integration) pipeline following merge of changes into a GitLab source control system. This pipeline automatically runs code quality and security checks as well as unit and regression testing. Our teams have experience with a wide variety of toolchains, including Github, Azure DevOps and AWS.

The term “deployment to enable cost reduction” can be viewed through different lenses. One example might be automatically removing test environments when not required. Another might be establishing elastic scaling to “right-size” the infrastructure for current load.

### *4) What is the process of maintaining integration tools/technology within a service?*

The project should have a stated goal of being evergreen such that no single component becomes end of life. This applies equally to commercial software and open-source software. A goal might be to be within N-2 or N-1, where N is the latest version of a tool or component. A strategy will be required for each such tool or component. The upgrade path would therefore follow the strategy, other than by exception, e.g. critical vulnerabilities.

The application should be engineered such that tools and components can be upgraded without loss of service. This requires adapting to API versioning and possible use of feature flags. We will assess the current application design and implementation during Transition.

The [Redacted]project provides an example of how we manage a wider set of integration tools/technology. For 14 major components used by the application, a strategy has been written that identifies what N and N-1 means. The programme performs a review of all 14 components every three months to identify required upgrades.

### *5) Can the supplier provide example of where they had to conduct a transition from a different organisation and how that is typically managed?*

CGI successfully conducted a similar transition in 2021 when we took on support and maintenance of the Subsidy Transparency Database for BEIS, following its delivery into Beta by a third party supplier. The transition was conducted based on our standard Transition Project Plan, which was tailored to suit the specific requirements of the service. Positive feedback from BEIS customers confirmed that it was successfully completed under similarly short timescales as are required for the RPR service.

An experienced Transition Project Manager will lead a team consisting of relevant technical consultants, a security specialist, and the Service Delivery Manager who will be assigned to manage the service following transition. A Transition Project Plan will be produced and used to manage progress against the agreed transition tasks, typically including:

* **Knowledge Transfer** – from both BEIS and the existing supplier
* **Establish the Technical Capability** – including access to required environments and technical artefacts
* **Validate the Technical Capability** – essentially ensuring we have the capability to build and deploy the service to each environment throughout the end-to-end delivery lifecycle.
* **Establish the Service** – design and implementation of the service operating model required to deliver the service, including the required security controls.

For a transition over a short period or with a fixed duration, as in this case, our approach is to build a Remedial Action Plan to address any issues and improvements identified during Transition. The activities can then be completed post service go-live.

For RPR we propose drawing from the same resource pool as the Subsidy Transparency Service. BEIS has given positive feedback on our team’s approach to taking on and supporting the Subsidy Transparency Service and we would look to leverage that experience and knowledge for the RPR service.

## Security & Business Continuity/Disaster Recovery

### *6) How do you create, maintain and test business continuity within your disaster recovery plans?*

CGI policy dictates that all business operations and client services have effective and tested business continuity plans; we regularly test 'as live' all Business Continuity Plans.

Our Business Continuity policy is set at our corporate level, with the UK Business Continuity Management System (BCMS) certified to ISO:22301. The BCMS supports service-specific IT Disaster Recovery and Service Continuity plans. These specific plans enable us to respond effectively to events that may adversely impact our clients' services. We are able to provide a 24/7/365 response, especially as many of the services we provide are essential to their continued operations.

Every CGI project or service is required to carry out a project-level business continuity assessment at start-up. This identifies and initiates any preventative activities that need to be undertaken (e.g. backups, replication, etc.) and documents the implications to the business and/or customer of system, project or service down-time. This is reviewed regularly for accuracy and completeness by the CGI Service Delivery Manager and is used to ensure that any required activities to protect the project or service are in place.

The RPR service-specific plan will be developed based on the existing materials identified during Transition. We will combine your existing position with our BCDR experience to deliver an integrated BEIS/CGI BCDR plan that makes trigger points, e.g. BC incident causing a major/critical service failure, and communication pathways to BEIS clear. The plan will include:

* Whom to contact, their role and responsibilities
* How and when to initiate/trigger resolution and communication plans depending on the incident assessment, the actions to take (primary/secondary)
* The frequency, delivery methods and types of status updates to BEIS governance stakeholders.
* Emergency operating and management procedures,
* Agreed special services levels that may apply
* Actions, dependencies, test measures and other success criteria required to return to normal operations.

## Implementation

### *7) What experience do you have with running annual penetration testing with external suppliers, and what approach do you take to fix security issues identified during the testing?*

Annual penetration testing of secure internet-facing web service solutions is a common service requirement for many of our clients, including: [Redacted]. We also provide NCSC-accredited Penetration Testing services in our own right, so are experienced as both the tester and the subject of third party testing.

To ensure no conflict of interest, it is recommended that BEIS engage the external test partner. We will collaborate with your chosen partner to define a detailed schedule for testing activity. We will provide any necessary facilitation to ensure that test partners have the necessary systems access. We help to onboard the tester and provide them with any necessary background information to ensure a smooth test.

During testing we work with your test partner to understand issues raised. We then work jointly with you and your test partner to triage all identified issues, confirming severity, impact and priority for resolution. For the RPR service, we understand that there may be an ongoing backlog of product enhancements. We recommend adopting a product management model, with work managed using a Kanban / Scrum approach based on a prioritised product backlog. This backlog will include new features, bug fixes, technical debt and continuous improvement items, with prioritisation driven by business need. Application releases and environment changes to resolve security issues will be delivered to agreed schedules.

### *8) How do you respond to critical incidents, and how long does it take you to report this and respond to the incidents?*

CGI will generally be notified of a critical incident either directly by the BEIS L1 support team, or by an alert generated by service monitoring. If the latter, then the CGI Service Team would inform BEIS immediately, within agreed service hours, upon receiving the alert.

CGI will deliver the support service using a shared resource model, providing us with the coverage and flexibility to respond to critical incidents within the required 30 minute response target.

Any critical incident would be escalated to the CGI Service Delivery Manager who would coordinate the response and provide regular updates to BEIS on progress being made.

### *9) How do you monitor server loads and ensure optimal site running?*

The GOV.UK Platform as a Service hosting service provides a number of flexible features to support both application and backing service performance metrics. During Transition we will assess how the application and hosting environment are currently configured.

For a similar service we provide for [Redacted], capacity and performance metrics are monitored using AWS CloudWatch, with alerts configured to automatically notify when thresholds are reached, allowing us to investigate and prevent service incidents. A summary of key capacity and performance metrics are also produced at the end of each month, allowing trend analysis to be performed and any required improvements to be identified.

### *10) Can you provide some examples where you have managed support and maintenance, enhanced the service by introducing new features and how they went about this?*

As mentioned earlier, CGI currently provide support and maintenance of BEIS’s Subsidy Transparency Database, including the on-going enhancement of the application.

A similar service has been provided to [Redacted]since 2018, where several applications have been supported alongside the delivery of a modern cloud-based solution replacing their legacy timber management application.

In both cases, delivery of the service is based on DevOps product management principles with a single team responsible for both development and support of the application.

A Product Backlog is maintained, including new requirements requested by the customer, plus improvements identified by CGI as part of Continuous Service Improvement, and any underlying defects found during support of the service.

Work packages are then agreed to deliver enhancements as prioritised by the customer. An Agile Kanban / Scrum approach ensures that the customer’s Product Owner is closely involved with requirement definition, solution refinement, reviews, retrospectives and demonstrations at the end of each delivery ‘sprint’, creating a continuous feedback loop which ensures delivery will meet expectations.

## Schedule 2: Call-Off Contract charges

The detailed Charges breakdown for the provision of Services during the Term will include:

**Initial Transition to Supplier Support**

[Table Redacted]

## The Transition will be charge by the Supplier under a Fixed Capacity, Fixed Budget basis using the rate card outlined above. This amount will therefore not be exceeded. During Transition, a Remedial Action Plan will be developed identifying any items that must be completed before the service being taken on can be confirmed to align with the specification in Schedule 1 (“Service Acceptance”). Items on the Remedial Action Plan will be added to the product backlog and completed as part of the enhancements process. The Service may commence on a reasonable endeavours basis prior to Service Acceptance.

Other items, that do not impact the immediate delivery or cost of the Service, will be raised as risks and presented to the BEIS for decision as to remediate as product backlog enhancements, under time and materials, or accept as known risks.

## Transition effort will be invoiced monthly, against actual effort expended within the month, until the transition fixed capacity has been completed, all the while being capped at the total amount in the table above.

## **Support Service Fixed Price**

The Supplier shall charge for the on-going Service at a Support Service Fixed Price of [Redacted] **per month** (running from the 23rd of every calendar month starting on the first 23rd date after Service Acceptance) in accordance with the assumptions and parameters as set-out in Schedule 1. The Support Service Fixed Price will be invoiced monthly in arrears. The Service will commence post-Initial Transition completion and will be undertaken on a reasonable endeavour basis until completion of Service Acceptance. The Support Service Fixed Price includes the escalation process as set out in Schedule 1.

## **Rate Card**

Any additional T&M activities including development work will be based on the following Rate Card, taken from the Supplier G Cloud SFIA Rate Card. Overtime rates will be charged at 1.5 x Day Rate for weekdays and x2 for weekend and Public Holidays. Any overtime will be subject to prior written approval from the Buyer.

**Skills for the Information Age (SFIA) Daily Rate Card**

[Table Redacted]

All Charges are exclusive of expenses, VAT and other applicable taxes, which will be charged at the prevailing rate.

## Part B: Terms and conditions

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

1.1 The Supplier must start providing the Services on the date specified in the Order Form.

1.2 This Call-Off Contract will expire on the Expiry Date in the Order Form. It will be for up to 24 months from the Start date unless Ended earlier under clause 18 or extended by the Buyer under clause 1.3.

1.3 The Buyer can extend this Call-Off Contract, with written notice to the Supplier, by the period in the Order Form, provided that this is within the maximum permitted under the Framework Agreement of 2 periods of up to 12 months each.

1.4 The Parties must comply with the requirements under clauses 21.3 to 21.8 if the Buyer reserves the right in the Order Form to extend the contract beyond 24 months.

### 2. Incorporation of terms

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

* 4.1 (Warranties and representations)
* 4.2 to 4.7 (Liability)
* 4.11 to 4.12 (IR35)
* 5.4 to 5.5 (Force majeure)
* 5.8 (Continuing rights)
* 5.9 to 5.11 (Change of control)
* 5.12 (Fraud)
* 5.13 (Notice of fraud)
* 7.1 to 7.2 (Transparency)
* 8.3 (Order of precedence)
* 8.6 (Relationship)
* 8.9 to 8.11 (Entire agreement)
* 8.12 (Law and jurisdiction)
* 8.13 to 8.14 (Legislative change)
* 8.15 to 8.19 (Bribery and corruption)
* 8.20 to 8.29 (Freedom of Information Act)
* 8.30 to 8.31 (Promoting tax compliance)
* 8.32 to 8.33 (Official Secrets Act)
* 8.34 to 8.37 (Transfer and subcontracting)
* 8.40 to 8.43 (Complaints handling and resolution)
* 8.44 to 8.50 (Conflicts of interest and ethical walls)
* 8.51 to 8.53 (Publicity and branding)
* 8.54 to 8.56 (Equality and diversity)
* 8.59 to 8.60 (Data protection
* 8.64 to 8.65 (Severability)
* 8.66 to 8.69 (Managing disputes and Mediation)
* 8.80 to 8.88 (Confidentiality)
* 8.89 to 8.90 (Waiver and cumulative remedies)
* 8.91 to 8.101 (Corporate Social Responsibility)
* paragraphs 1 to 10 of the Framework Agreement glossary and interpretation
* any audit provisions from the Framework Agreement set out by the Buyer in the Order Form

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

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

2.2.2 a reference to ‘CCS’ will be a reference to ‘the Buyer’

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

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

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

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

### 3. Supply of services

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

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

### 4. Supplier staff

4.1 The Supplier Staff must:

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

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

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

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

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

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

4.3 The Supplier may substitute any Supplier Staff as long as they have the equivalent experience and qualifications to the substituted staff member.

4.4 The Buyer may conduct IR35 Assessments using the ESI tool to assess whether the Supplier’s engagement under the Call-Off Contract is Inside or Outside IR35.

4.5 The Buyer may End this Call-Off Contract for Material Breach as per clause 18.5 hereunder if the Supplier is delivering the Services Inside IR35.

4.6 The Buyer may need the Supplier to complete an Indicative Test using the ESI tool before the Start date or at any time during the provision of Services to provide a preliminary view of whether the Services are being delivered Inside or Outside IR35. If the Supplier has completed the Indicative Test, it must download and provide a copy of the PDF with the 14-digit ESI reference number from the summary outcome screen and promptly provide a copy to the Buyer.

4.7 If the Indicative Test indicates the delivery of the Services could potentially be Inside IR35, the Supplier must provide the Buyer with all relevant information needed to enable the Buyer to conduct its own IR35 Assessment.

4.8 If it is determined by the Buyer that the Supplier is Outside IR35, the Buyer will provide the ESI reference number and a copy of the PDF to the Supplier.

### 5. Due diligence

 5.1 Both Parties agree that when entering into a Call-Off Contract they:

5.1.1 have made their own enquiries and are satisfied by the accuracy of any information supplied by the other Party

5.1.2 are confident that they can fulfil their obligations according to the Call-Off Contract terms

5.1.3 have raised all due diligence questions before signing the Call-Off Contract

5.1.4 have entered into the Call-Off Contract relying on its own due diligence

### 6. Business continuity and disaster recovery

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

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

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

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

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

7.2 The Buyer will pay the Supplier 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 [Redacted]

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 [Redacted] 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 [Redacted] for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date

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

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

9.4.1 a broker's verification of insurance

9.4.2 receipts for the insurance premium

9.4.3 evidence of payment of the latest premiums due

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

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

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

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

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

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

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

9.8.1 premiums, which it will pay promptly

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

### 10. Confidentiality

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

### 11. Intellectual Property Rights

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

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

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

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

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

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

11.5.2 Supplier’s performance of the Services

11.5.3 use by the Buyer of the Services

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

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

11.6.2 substitute Services of equivalent functionality and performance, to avoid the infringement or the alleged infringement, as long as there is no additional cost or burden to the Buyer

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

11.7 Clause 11.5 will not apply if the IPR Claim is from:

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

11.7.3 other material provided by the Buyer necessary for the Services

11.8 If the Supplier does not comply with clauses 11.2 to 11.6, the Buyer may End this Call-Off Contract for Material Breach. The Supplier will, on demand, refund the Buyer all the money paid for the affected Services.

### 12. Protection of information

12.1 The Supplier must:

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

12.1.2 only Process the Buyer Personal Data as necessary for the provision of the G-Cloud Services or as required by Law or any Regulatory Body

12.1.3 take reasonable steps to ensure that any Supplier Staff who have access to Buyer Personal Data act in compliance with Supplier's security processes

12.2 The Supplier must fully assist with any complaint or request for Buyer Personal Data including by:

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

12.2.2 complying with a data access request within the timescales in the Data Protection Legislation and following the Buyer’s instructions

12.2.3 providing the Buyer with any Buyer Personal Data it holds about a Data Subject (within the timescales required by the Buyer)

12.2.4 providing the Buyer with any information requested by the Data Subject

12.3 The Supplier must get prior written consent from the Buyer to transfer Buyer Personal Data to any other person (including any Subcontractors) for the provision of the G-Cloud Services.

### 13. Buyer data

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

13.2 The Supplier will not store or use Buyer Data except if necessary to fulfil its

obligations.

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

13.4 The Supplier must ensure that any Supplier system that holds any Buyer Data is a secure system that complies with the Supplier’s and Buyer’s security policies and all Buyer requirements in the Order Form.

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

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

13.6.1 the principles in the Security Policy Framework:

<https://www.gov.uk/government/publications/security-policy-framework> and

the Government Security Classification policy: https:/www.gov.uk/government/publications/government-security-classifications

13.6.2 guidance issued by the Centre for Protection of National Infrastructure on

Risk Management[:](https://www.cpni.gov.uk/content/adopt-risk-management-approach)

<https://www.cpni.gov.uk/content/adopt-risk-management-approach> and

Protection of Sensitive Information and Assets:

<https://www.cpni.gov.uk/protection-sensitive-information-and-assets>

13.6.3 the National Cyber Security Centre’s (NCSC) information risk management guidance:

<https://www.ncsc.gov.uk/collection/risk-management-collection>

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

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

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

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

13.6.6 buyer requirements in respect of AI ethical standards.

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

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

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

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

### 14. Standards and quality

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

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

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

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

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

14.5 The Supplier must immediately disconnect its G-Cloud Services from the PSN if the PSN Authority considers there is a risk to the PSN’s security and the Supplier agrees that the Buyer and the PSN Authority will not be liable for any actions, damages, costs, and any other Supplier liabilities which may arise[.](https://www.gov.uk/government/publications/cyber-risk-management-a-board-level-responsibility/10-steps-summary)

### 15. Open source

15.1 All software created for the Buyer must be suitable for publication as open source, unless otherwise agreed by the Buyer.

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

### 16. Security

16.1 If requested to do so by the Buyer, before entering into this Call-Off Contract the Supplier will, within 15 Working Days of the date of this Call-Off Contract, develop (and obtain the Buyer’s written approval of) a Security Management Plan and an Information Security Management System. After Buyer approval the Security Management Plan and Information Security Management System will apply during the Term of this Call-Off Contract. Both plans will comply with the Buyer’s security policy and protect all aspects and processes associated with the delivery of the Services.

16.2 The Supplier will use all reasonable endeavours, software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software.

16.3 If Malicious Software causes loss of operational efficiency or loss or corruption of Service Data, the Supplier will help the Buyer to mitigate any losses and restore the Services to operating efficiency as soon as possible.

16.4 Responsibility for costs will be at the:

16.4.1 Supplier’s expense if the Malicious Software originates from the Supplier software or the Service Data while the Service Data was under the control of the Supplier, unless the Supplier can demonstrate that it was already present, not quarantined or identified by the Buyer when provided

16.4.2 Buyer’s expense if the Malicious Software originates from the Buyer software or the Service Data, while the Service Data was under the Buyer’s control

16.5 The Supplier will immediately notify the Buyer of any breach of security of Buyer’s Confidential Information (and the Buyer of any Buyer Confidential Information breach). Where the breach occurred because of a Supplier Default, the Supplier will recover the Buyer’s Confidential Information however it may be recorded.

16.6 Any system development by the Supplier should also comply with the government’s ‘10 Steps to Cyber Security’ guidance:

<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>

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

### 17. Guarantee

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

17.1.1 an executed Guarantee in the form at Schedule 5

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

### 18. Ending the Call-Off Contract

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

18.2 The Parties agree that the:

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

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

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

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

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

18.4.2 any fraud

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

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

18.5.2 an Insolvency Event of the other Party happens

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

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

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

### 19. Consequences of suspension, ending and expiry

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19.5.5 work with the Buyer on any ongoing work

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

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

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

### 20. Notices

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

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

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

### 21. Exit plan

21.1 The Supplier must provide an exit plan in its Application which ensures continuity of service and the Supplier will follow it.

21.2 When requested, the Supplier will help the Buyer to migrate the Services to a replacement supplier in line with the exit plan. This will be at the Supplier’s own expense if the Call-Off Contract Ended before the Expiry Date due to Supplier cause.

21.3 If the Buyer has reserved the right in the Order Form to extend the Call-Off Contract Term beyond 24 months the Supplier must provide the Buyer with an additional exit plan for approval by the Buyer at least 8 weeks before the 18 month anniversary of the Start date.

21.4 The Supplier must ensure that the additional exit plan clearly sets out the Supplier’s methodology for achieving an orderly transition of the Services from the Supplier to the Buyer or its replacement Supplier at the expiry of the proposed extension period or if the contract Ends during that period.

21.5 Before submitting the additional exit plan to the Buyer for approval, the Supplier will work with the Buyer to ensure that the additional exit plan is aligned with the Buyer’s own exit plan and strategy.

21.6 The Supplier acknowledges that the Buyer’s right to extend the Term beyond 24 months is subject to the Buyer’s own governance process. Where the Buyer is a central government department, this includes the need to obtain approval from GDS under the Spend Controls process. The approval to extend will only be given if the Buyer can clearly demonstrate that the Supplier’s additional exit plan ensures that:

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

21.6.2 there will be no adverse impact on service continuity

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

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

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

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

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

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

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

21.8.4 the testing and assurance strategy for exported Buyer Data

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

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

### 22. Handover to replacement supplier

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

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

22.1.2 other information reasonably requested by the Buyer

22.2 On reasonable notice at any point during the Term, the Supplier will provide any information and data about the G-Cloud Services reasonably requested by the Buyer (including information on volumes, usage, technical aspects, service performance and staffing). This will help the Buyer understand how the Services have been provided and to run a fair competition for a new supplier.

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

### 23. Force majeure

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

### 24. Liability

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

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

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

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

### 25. Premises

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

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

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

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

25.5 While on the Buyer’s premises, the Supplier will:

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

25.5.2 comply with Buyer requirements for the conduct of personnel

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

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

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

### 26. Equipment

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

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

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

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

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

### 28. Environmental requirements

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

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

### 29. The Employment Regulations (TUPE)

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

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

29.2.1 the activities they perform

29.2.2 age

29.2.3 start date

29.2.4 place of work

29.2.5 notice period

29.2.6 redundancy payment entitlement

29.2.7 salary, benefits and pension entitlements

29.2.8 employment status

29.2.9 identity of employer

29.2.10 working arrangements

29.2.11 outstanding liabilities

29.2.12 sickness absence

29.2.13 copies of all relevant employment contracts and related documents

29.2.14 all information required under regulation 11 of TUPE or as reasonably

requested by the Buyer

29.3 The Supplier warrants the accuracy of the information provided under this TUPE clause and will notify the Buyer of any changes to the amended information as soon as reasonably possible. The Supplier will permit the Buyer to use and disclose the information to any prospective Replacement Supplier.

29.4 In the 12 months before the expiry of this Call-Off Contract, the Supplier will not change the identity and number of staff assigned to the Services (unless reasonably requested by the Buyer) or their terms and conditions, other than in the ordinary course of business.

29.5 The Supplier will co-operate with the re-tendering of this Call-Off Contract by allowing the Replacement Supplier to communicate with and meet the affected employees or their representatives.

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

29.6.1 its failure to comply with the provisions of this clause

29.6.2 any claim by any employee or person claiming to be an employee (or their employee representative) of the Supplier which arises or is alleged to arise from any act or omission by the Supplier on or before the date of the Relevant Transfer

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

29.8 For these TUPE clauses, the relevant third party will be able to enforce its rights under this clause but their consent will not be required to vary these clauses as the Buyer and Supplier may agree.

### 30. Additional G-Cloud services

30.1 The Buyer may require the Supplier to provide Additional Services. The Buyer doesn’t have to buy any Additional Services from the Supplier and can buy services that are the same as or similar to the Additional Services from any third party.

30.2 If reasonably requested to do so by the Buyer in the Order Form, the Supplier must provide and monitor performance of the Additional Services using an Implementation Plan.

### 31. Collaboration

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

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

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

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

### 32. Variation process

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

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

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

### 33. Data Protection Legislation (GDPR)

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

## Schedule 3: Collaboration agreement - Not Applicable

This agreement is made on [enter date]

between:

1) [Buyer name] of [Buyer address] (the Buyer)

2) [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]

3) [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]

4) [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]

5) [Company name] a company incorporated in [company address] under [registration number], whose registered office is at [registered address]

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

Whereas the:

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

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

### 1. Definitions and interpretation

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

1.1.1 “Agreement” means this collaboration agreement, containing the Clauses and Schedules

1.1.2 “Call-Off Contract” means each contract that is let by the Buyer to one of the Collaboration Suppliers

1.1.3 “Contractor’s Confidential Information” has the meaning set out in the Call-Off Contracts

1.1.4 “Confidential Information” means the Buyer Confidential Information or any Collaboration Supplier's Confidential Information

1.1.5 “Collaboration Activities” means the activities set out in this Agreement

1.1.6 “Buyer Confidential Information” has the meaning set out in the Call-Off Contract

1.1.7 “Default” means any breach of the obligations of any Collaboration Supplier or any Default, act, omission, negligence or statement of any Collaboration Supplier, its employees, servants, agents or subcontractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Collaboration Supplier is liable (by way of indemnity or otherwise) to the other parties

1.1.8 “Detailed Collaboration Plan” has the meaning given in clause 3.2

1.1.9 “Dispute Resolution Process” means the process described in clause 9

1.1.10 “Effective Date” means [insert date]

1.1.11 “Force Majeure Event” has the meaning given in clause 11.1.1

1.1.12 “Mediator” has the meaning given to it in clause 9.3.1

1.1.13 “Outline Collaboration Plan” has the meaning given to it in clause 3.1

1.1.14 “Term” has the meaning given to it in clause 2.1

1.1.15 "Working Day" means any day other than a Saturday, Sunday or public holiday in England and Wales

1.2 General

1.2.1 As used in this Agreement the:

1.2.1.1 masculine includes the feminine and the neuter

1.2.1.2 singular includes the plural and the other way round

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

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

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

1.2.4 Except as otherwise expressly provided in this Agreement, all remedies available to any party under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy will not exclude the exercise of any other remedy.

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

### 2. Term of the agreement

2.1 This Agreement will come into force on the Effective Date and, unless earlier terminated in accordance with clause 10, will expire 6 months after the expiry or termination (however arising) of the exit period of the last Call-Off Contract (the “Term”).

2.2 A Collaboration Supplier’s duty to perform the Collaboration Activities will continue until the end of the exit period of its last relevant Call-Off Contract.

### 3. Provision of the collaboration plan

3.1 The Collaboration Suppliers will, within 2 weeks (or any longer period as notified by the Buyer in writing) of the Effective Date, provide to the Buyer detailed proposals for the Collaboration Activities they require from each other (the “Outline Collaboration Plan”).

3.2 Within 10 Working Days (or any other period as agreed in writing by the Buyer and the Collaboration Suppliers) of [receipt of the proposals] or [the Effective Date], the Buyer will prepare a plan for the Collaboration Activities (the “Detailed Collaboration Plan”). The Detailed Collaboration Plan will include full details of the activities and interfaces that involve all of the Collaboration Suppliers to ensure the receipt of the services under each Collaboration Supplier’s respective [contract] [Call-Off Contract], by the Buyer. The Detailed Collaboration Plan will be based on the Outline Collaboration Plan and will be submitted to the Collaboration Suppliers for approval.

3.3 The Collaboration Suppliers will provide the help the Buyer needs to prepare the Detailed Collaboration Plan.

3.4 The Collaboration Suppliers will, within 10 Working Days of receipt of the Detailed Collaboration Plan, either:

3.4.1 approve the Detailed Collaboration Plan

3.4.2 reject the Detailed Collaboration Plan, giving reasons for the rejection

3.5 The Collaboration Suppliers may reject the Detailed Collaboration Plan under clause 3.4.2 only if it is not consistent with their Outline Collaboration Plan in that it imposes additional, more onerous, obligations on them.

3.6 If the parties fail to agree the Detailed Collaboration Plan under clause 3.4, the dispute will be resolved using the Dispute Resolution Process.

### 4. Collaboration activities

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

4.2 The Collaboration Suppliers will provide all additional cooperation and assistance as is reasonably required by the Buyer to ensure the continuous delivery of the services under the Call-Off Contract.

4.3 The Collaboration Suppliers will ensure that their respective subcontractors provide all co-operation and assistance as set out in the Detailed Collaboration Plan.

### 5. Invoicing

5.1 If any sums are due under this Agreement, the Collaboration Supplier responsible for paying the sum will pay within 30 Working Days of receipt of a valid invoice.

5.2 Interest will be payable on any late payments under this Agreement under the Late Payment of Commercial Debts (Interest) Act 1998, as amended.

### 6. Confidentiality

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

6.2 Each Collaboration Supplier warrants that:

6.2.1 any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) will only use Confidential Information for the purposes of this Agreement

6.2.2 any person employed or engaged by it (in connection with this Agreement) will not disclose any Confidential Information to any third party without the prior written consent of the other party

6.2.3 it will take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (except as agreed) or used other than for the purposes of this Agreement by its employees, servants, agents or subcontractors

6.2.4 neither it nor any person engaged by it, whether as a servant or a consultant or otherwise, will use the Confidential Information for the solicitation of business from the other or from the other party's servants or consultants or otherwise

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

6.3.1 or becomes public knowledge other than by breach of this clause 6

6.3.2 in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party

6.3.3 received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure

6.3.4 independently developed without access to the Confidential Information

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

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

### 7. Warranties

7.1 Each Collaboration Supplier warrant and represent that:

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

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

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

### 8. Limitation of liability

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

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

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

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

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

8.5.1 indirect loss or damage

8.5.2 special loss or damage

8.5.3 consequential loss or damage

8.5.4 loss of profits (whether direct or indirect)

8.5.5 loss of turnover (whether direct or indirect)

8.5.6 loss of business opportunities (whether direct or indirect)

8.5.7 damage to goodwill (whether direct or indirect)

8.6 Subject always to clauses 8.1 and 8.2, the provisions of clause 8.5 will not be taken as limiting the right of the Buyer to among other things, recover as a direct loss any:

8.6.1 additional operational or administrative costs and expenses arising from a Collaboration Supplier’s Default

8.6.2 wasted expenditure or charges rendered unnecessary or incurred by the Buyer arising from a Collaboration Supplier's Default

### 9. Dispute resolution process

9.1 All disputes between any of the parties arising out of or relating to this Agreement will be referred, by any party involved in the dispute, to the representatives of the parties specified in the Detailed Collaboration Plan.

9.2 If the dispute cannot be resolved by the parties' representatives nominated under clause 9.1 within a maximum of 5 Working Days (or any other time agreed in writing by the parties) after it has been referred to them under clause 9.1, then except if a party seeks urgent injunctive relief, the parties will refer it to mediation under the process set out in clause 9.3 unless the Buyer considers (acting reasonably and considering any objections to mediation raised by the other parties) that the dispute is not suitable for resolution by mediation.

9.3 The process for mediation and consequential provisions for mediation are:

9.3.1 a neutral adviser or mediator will be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one party to the other parties to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, any party will within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to the parties that he is unable or unwilling to act, apply to the President of the Law Society to appoint a Mediator

9.3.2 the parties will within 10 Working Days of the appointment of the Mediator meet to agree a programme for the exchange of all relevant information and the structure of the negotiations

9.3.3 unless otherwise agreed by the parties in writing, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the parties in any future proceedings

9.3.4 if the parties reach agreement on the resolution of the dispute, the agreement will be put in writing and will be binding on the parties once it is signed by their authorised representatives

9.3.5 failing agreement, any of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. The opinion will be provided on a without prejudice basis and will not be used in evidence in any proceedings relating to this Agreement without the prior written consent of all the parties

9.3.6 if the parties fail to reach agreement in the structured negotiations within 20 Working Days of the Mediator being appointed, or any longer period the parties agree on, then any dispute or difference between them may be referred to the courts

9.4 The parties must continue to perform their respective obligations under this Agreement and under their respective Contracts pending the resolution of a dispute.

### 10. Termination and consequences of termination

#### 10.1 Termination

10.1.1 The Buyer has the right to terminate this Agreement at any time by notice in writing to the Collaboration Suppliers whenever the Buyer has the right to terminate a Collaboration Supplier’s [respective contract] [Call-Off Contract].

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

#### 10.2 Consequences of termination

10.2.1 Subject to any other right or remedy of the parties, the Collaboration Suppliers and the Buyer will continue to comply with their respective obligations under the [contracts] [Call-Off Contracts] following the termination (however arising) of this Agreement.

10.2.2 Except as expressly provided in this Agreement, termination of this Agreement will be without prejudice to any accrued rights and obligations under this Agreement.

### 11. General provisions

#### 11.1 Force majeure

11.1.1 For the purposes of this Agreement, the expression “Force Majeure Event” will mean any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to any party, the party's personnel or any other failure of a Subcontractor.

11.1.2 Subject to the remaining provisions of this clause 11.1, any party to this Agreement may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.

11.1.3 A party cannot claim relief if the Force Majeure Event or its level of exposure to the event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

11.1.4 The affected party will immediately give the other parties written notice of the Force Majeure Event. The notification will include details of the Force Majeure Event together with evidence of its effect on the obligations of the affected party, and any action the affected party proposes to take to mitigate its effect.

11.1.5 The affected party will notify the other parties in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following the notification, this Agreement will continue to be performed on the terms existing immediately before the Force Majeure Event unless agreed otherwise in writing by the parties.

#### 11.2 Assignment and subcontracting

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

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

#### 11.3 Notices

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

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

#### 11.4 Entire agreement

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

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

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

#### 11.5 Rights of third parties

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

#### 11.6 Severability

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

#### 11.7 Variations

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

#### 11.8 No waiver

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

#### 11.9 Governing law and jurisdiction

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

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

**For and on behalf of the Buyer**

Signed by:

Full name (capitals):

Position:

Date:

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

Signed by:

Full name (capitals):

Position:

Date:

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

Signed by:

Full name (capitals):

Position:

Date:

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

Signed by:

Full name (capitals):

Position:

Date:

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

Signed by:

Full name (capitals):

Position:

Date:

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

Signed by:

Full name (capitals):

Position:

Date:

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

Signed by:

Full name (capitals):

Position:

Date:

### Collaboration Agreement Schedule 1: List of contracts

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

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

## Schedule 4: Alternative clauses – Not Applicable

### 1. Introduction

1.1 This Schedule specifies the alternative clauses that may be requested in the

Order Form and, if requested in the Order Form, will apply to this Call-Off Contract.

### 2. Clauses selected

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

2.1.1 Scots Law and Jurisdiction

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

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

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

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

2.1.6 References to “tort” will be replaced with “delict” throughout

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

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

### 2.3 Discrimination

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

* Employment (Northern Ireland) Order 2002
* Fair Employment and Treatment (Northern Ireland) Order 1998
* Sex Discrimination (Northern Ireland) Order 1976 and 1988
* Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003
* Equal Pay Act (Northern Ireland) 1970
* Disability Discrimination Act 1995
* Race Relations (Northern Ireland) Order 1997
* Employment Relations (Northern Ireland) Order 1999 and Employment Rights (Northern Ireland) Order 1996
* Employment Equality (Age) Regulations (Northern Ireland) 2006
* Part-time Workers (Prevention of less Favourable Treatment) Regulation 2000
* Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002
* The Disability Discrimination (Northern Ireland) Order 2006
* The Employment Relations (Northern Ireland) Order 2004
* Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006
* Employment Relations (Northern Ireland) Order 2004
* Work and Families (Northern Ireland) Order 2006

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

a. persons of different religious beliefs or political opinions

b. men and women or married and unmarried persons

c. persons with and without dependants (including women who are

pregnant or on maternity leave and men on paternity leave)

d. persons of different racial groups (within the meaning of the Race

Relations (Northern Ireland) Order 1997)

e. persons with and without a disability (within the meaning of the

Disability Discrimination Act 1995)

f. persons of different ages

g. persons of differing sexual orientation

2.3.2 The Supplier will take all reasonable steps to secure the observance of clause

2.3.1 of this Schedule by all Supplier Staff.

### 2.4 Equality policies and practices

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

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

a. the issue of written instructions to staff and other relevant persons

b. the appointment or designation of a senior manager with responsibility for equal opportunities

c. training of all staff and other relevant persons in equal opportunities and harassment matters

d. the inclusion of the topic of equality as an agenda item at team, management and staff meetings

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

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

A. the Equality Commission notifying the Supplier of an alleged breach by it or any Subcontractor (or any of their shareholders or directors) of the Fair Employment and Treatment (Northern Ireland) Order 1998 or

B. any finding of unlawful discrimination (or any offence under the Legislation mentioned in clause 2.3 above) being made against the Supplier or its Subcontractors during the Call-Off Contract Period by any Industrial or Fair Employment Tribunal or court,

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

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

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

### 2.5 Equality

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

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

### 2.6 Health and safety

2.6.1 The Supplier will promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Call-Off Contract. The Customer will promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer premises and which may affect the Supplier in the performance of its obligations under the Call-Off Contract.

2.6.2 While on the Customer premises, the Supplier will comply with any health and safety measures implemented by the Customer in respect of Supplier Staff and other persons working there.

2.6.3 The Supplier will notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Call-Off Contract on the Customer premises if that incident causes any personal injury or damage to property which could give rise to personal injury.

2.6.4 The Supplier will comply with the requirements of the Health and Safety at Work (Northern Ireland) Order 1978 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Supplier Staff and other persons working on the Customer premises in the performance of its obligations under the Call-Off Contract.

2.6.5 The Supplier will ensure that its health and safety policy statement (as required by the Health and Safety at Work (Northern Ireland) Order 1978) is made available to the Customer on request.

### 2.7 Criminal damage

2.7.1 The Supplier will maintain standards of vigilance and will take all precautions as advised by the Criminal Damage (Compensation) (Northern Ireland) Order 1977 or as may be recommended by the police or the Northern Ireland Office (or, if replaced, their successors) and will compensate the Customer for any loss arising directly from a breach of this obligation (including any diminution of monies received by the Customer under any insurance policy).

2.7.2 If during the Call-Off Contract Period any assets (or any part thereof) is or are damaged or destroyed by any circumstance giving rise to a claim for compensation under the provisions of the Compensation Order the following provisions of this clause 2.7 will apply.

2.7.3 The Supplier will make (or will procure that the appropriate organisation make) all appropriate claims under the Compensation Order as soon as possible after the CDO Event and will pursue any claim diligently and at its cost. If appropriate, the Customer will also make and pursue a claim diligently under the Compensation Order. Any appeal against a refusal to meet any claim or against the amount of the award will be at the Customer’s cost and the Supplier will (at no additional cost to the Customer) provide any help the Customer reasonably requires with the appeal.

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

## Schedule 5: Guarantee – Not Applicable

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

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

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

and

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

**Whereas:**

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

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

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

Suggested headings are as follows:

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

|  |  |
| --- | --- |
| **Guarantor company** | [**Enter Company name**] **‘Guarantor’** |
| **Guarantor company address** | [**Enter Company address**] |
| **Account manager**  | [**Enter Account Manager name]** |
| Address: [**Enter Account Manager address]** |
| Phone: [**Enter Account Manager phone number]** |
| Email: [**Enter Account Manager email**] |
| Fax: [**Enter Account Manager fax** if applicable] |

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

### Definitions and interpretation

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

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

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

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

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

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

Unless the context otherwise requires:

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

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

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

### Guarantee and indemnity

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

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

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

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

### Obligation to enter into a new contract

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

### Demands and notices

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

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

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

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

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

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

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

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

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

Beneficiary’s protections

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

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

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

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

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

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

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

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

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

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

### Representations and warranties

The Guarantor hereby represents and warrants to the Buyer that:

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

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

### Payments and set-off

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

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

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

### Guarantor’s acknowledgement

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

### Assignment

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

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

### Severance

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

### Third-party rights

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

### Governing law

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

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

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

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

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

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

EXECUTED as a DEED by

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

Director

Director/Secretary

## Schedule 6: Glossary and interpretations

In this Call-Off Contract the following expressions mean:

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

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. |
| **Buyer** | The contracting authority ordering services as set out in the Order Form. |
| **Buyer Data** | All data supplied by the Buyer to the Supplier including Personal Data and Service Data that is owned and managed by the Buyer. |
| **Buyer Personal Data** | The Personal Data supplied by the Buyer to the Supplier for purposes of, or in connection with, this Call-Off Contract. |
| **Buyer Representative** | The representative appointed by the Buyer under this Call-Off Contract. |
| **Buyer Software** | Software owned by or licensed to the Buyer (other than under this Agreement), which is or will be used by the Supplier to provide the Services. |
| **Call-Off Contract** | This call-off contract entered into following the provisions of the Framework Agreement for the provision of Services made between the Buyer and the Supplier comprising the Order Form, the Call-Off terms and conditions, the Call-Off schedules and the Collaboration Agreement. |
| **Charges** | The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under this Call-Off Contract. |
| **Collaboration Agreement** | An agreement, substantially in the form set out at Schedule 3, between the Buyer and any combination of the Supplier and contractors, to ensure collaborative working in their delivery of the Buyer’s Services and to ensure that the Buyer receives end-to-end services across its IT estate. |
| **Commercially Sensitive Information** | Information, which the Buyer has been notified about by the Supplier in writing before the Start date with full details of why the Information is deemed to be commercially sensitive. |
| **Confidential Information** | Data, Personal Data and any information, which may include (but isn’t limited to) any:* 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 TaxAct 2010. 'Controls' and 'Controlled' will be interpreted accordingly. |
| **Controller** | Takes the meaning given in the GDPR. |
| **Crown** | The government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies carrying out functions on its behalf. |
| **Data Loss Event** | Event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Framework Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach. |
| **Data Protection Impact Assessment (DPIA)** | An assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data. |
| **Data Protection Legislation (DPL)** | Data Protection Legislation means:(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time(ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy(iii) all applicable Law about the Processing of Personal Data and privacy including if applicable legally binding guidance and codes of practice issued by the Information Commissioner |
| **Data Subject** | Takes the meaning given in the GDPR |
| **Default** | Default is any:* 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

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. |
| **Deliverable(s)** | The G-Cloud Services the Buyer contracts the Supplier to provide under this Call-Off Contract. |
| **Digital Marketplace** | The government marketplace where Services are available for Buyers to buy. ([https://www.digitalmarketplace.service.gov.uk](https://www.digitalmarketplace.service.gov.uk/)/) |
| **DPA 2018** | Data Protection Act 2018. |
| **Employment Regulations** | The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (‘TUPE’) which implements the Acquired Rights Directive. |
| **End** | Means to terminate; and Ended and Ending are construed accordingly. |
| **Environmental Information Regulations or EIR** | The Environmental Information Regulations 2004 together with any guidance or codes of practice issued by the Information Commissioner or relevant government department about the regulations. |
| **Equipment** | The Supplier’s hardware, computer and telecoms devices, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from CCS or the Buyer) in the performance of its obligations under this Call-Off Contract. |
| **ESI Reference Number** | The 14 digit ESI reference number from the summary of 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-for-tax> |
| **Expiry Date** | The expiry date of this Call-Off Contract in the Order Form. |
| **Force Majeure** | A force Majeure event means anything affecting either Party's performance of their obligations arising from any:* 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

The following do not constitute a Force Majeure event:* any industrial dispute about the Supplier, its staff, or failure in the Supplier’s (or a Subcontractor's) supply chain
* any event which is attributable to the wilful act, neglect or failure to take reasonable precautions by the Party seeking to rely on Force Majeure
* the event was foreseeable by the Party seeking to rely on Force Majeure at the time this Call-Off Contract was entered into
* any event which is attributable to the Party seeking to rely on Force Majeure and its failure to comply with its own business continuity and disaster recovery plans
 |
| **Former Supplier** | A supplier supplying services to the Buyer before the Start date that are the same as or substantially similar to the Services. This also includes any Subcontractor or the Supplier (or any subcontractor of the Subcontractor). |
| **Framework Agreement** | The clauses of framework agreement RM1557.12 together with the Framework Schedules. |
| **Fraud** | Any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Crown. |
| **Freedom of Information Act or FoIA** | The Freedom of Information Act 2000 and any subordinate legislation made under the Act together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to the legislation. |
| **G-Cloud Services** | The cloud services described in Framework Agreement Section 2 (Services Offered) as defined by the Service Definition, the Supplier Terms and any related Application documentation, which the Supplier must make available to CCS and Buyers and those services which are deliverable by the Supplier under the Collaboration Agreement. |
| **GDPR** | 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** | Contractual engagements which would be determined to be within the scope of the IR35 Intermediaries legislation if assessed using the ESI tool. |
| **Insolvency event** | Can be:* a voluntary arrangement
* a winding-up petition
* the appointment of a receiver or administrator
* an unresolved statutory demand
* a Schedule A1 moratorium
 |
| **Intellectual Property Rights or IPR** | Intellectual Property Rights are:* copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information
* applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction
* all other rights having equivalent or similar effect in any country or jurisdiction
 |
| **Intermediary** | For the purposes of the IR35 rules an intermediary can be:* the supplier's own limited company
* a service or a personal service company
* a partnership

It does not apply if you work for a client through a Managed Service Company (MSC) or agency (for example, an employment agency). |
| **IPR claim** | As set out in clause 11.5. |
| **IR35** | IR35 is also known as ‘Intermediaries legislation’. It’s a set of rules that affect tax and National Insurance where a Supplier is contracted to work for a client through an Intermediary. |
| **IR35 assessment** | Assessment of employment status using the ESI tool to determine if engagement is Inside or Outside IR35. |
| **Know-How** | All ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the G-Cloud Services but excluding know-how already in the Supplier’s or CCS’s possession before the Start date. |
| **Law** | Any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply. |
| **LED** | Law Enforcement Directive (EU) 2016/680. |
| **Loss** | All losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and '**Losses**' will be interpreted accordingly. |
| **Lot** | Any of the 3 Lots specified in the ITT and Lots will be construed accordingly. |
| **Malicious Software** | Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence. |
| **Management Charge** | The sum paid by the Supplier to CCS being an amount of up to 1% but currently set at 0.75% of all Charges for the Services invoiced to Buyers (net of VAT) in each month throughout the duration of the Framework Agreement and thereafter, until the expiry or End of any Call-Off Contract. |
| **Management Information** | The management information specified in Framework Agreement section 6 (What you report to CCS). |
| **Material Breach** | Those breaches which have been expressly set out as a Material Breach and any other single serious breach or persistent failure to perform as required under this Call-Off Contract. |
| **Ministry of Justice Code** | The Ministry of Justice’s Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000. |
| **New Fair Deal** | The revised Fair Deal position in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 as amended. |
| **Order** | An order for G-Cloud Services placed by a contracting body with the Supplier in accordance with the ordering processes. |
| **Order Form** | The order form set out in Part A of the Call-Off Contract to be used by a Buyer to order G-Cloud Services. |
| **Ordered G-Cloud Services** | G-Cloud Services which are the subject of an order by the Buyer. |
| **Outside IR35** | Contractual engagements which would be determined to not be within the scope of the IR35 intermediaries legislation if assessed using the ESI tool. |
| **Party** | The Buyer or the Supplier and ‘Parties’ will be interpreted accordingly. |
| **Personal Data** | Takes the meaning given in the GDPR. |
| **Personal Data Breach** | Takes the meaning given in the GDPR. |
| **Processing** | Takes the meaning given in the GDPR. |
| **Processor** | Takes the meaning given in the GDPR. |
| **Prohibited act** | To directly or indirectly offer, promise or give any person working for or engaged by a Buyer or CCS a financial or other advantage to:* 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:
	+ under the Bribery Act 2010
	+ under legislation creating offences concerning Fraud
	+ at common Law concerning Fraud
	+ committing or attempting or conspiring to commit Fraud
 |
| **Project Specific IPRs** | Any intellectual property rights in items created or arising out of the performance by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call-Off Contract including databases, configurations, code, instructions, technical documentation and schema but not including the Supplier’s Background IPRs. |
| **Property** | Assets and property including technical infrastructure, IPRs and equipment. |
| **Protective Measures** | Appropriate technical and organisational measures which may include: 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 high-performance network which helps public sector organisations work together, reduce duplication and share resources. |
| **Regulatory body or bodies** | Government departments and other bodies which, whether under statute, codes of practice or otherwise, are entitled to investigate or influence the matters dealt with in this Call-Off Contract. |
| **Relevant person** | Any employee, agent, servant, or representative of the Buyer, any other public body or person employed by or on behalf of the Buyer, or any other public body. |
| **Relevant Transfer** | A transfer of employment to which the employment regulations applies. |
| **Replacement Services** | Any services which are the same as or substantially similar to any of the Services and which the Buyer receives in substitution for any of the services after the expiry or Ending or partial Ending of the Call-Off Contract, whether those services are provided by the Buyer or a third party. |
| **Replacement supplier** | Any third-party service provider of replacement services appointed by the Buyer (or where the Buyer is providing replacement Services for its own account, the Buyer). |
| **Security management plan** | The Supplier's security management plan developed by the Supplier in accordance with clause 16.1. |
| **Services** | The services ordered by the Buyer as set out in the Order Form. |
| **Service data** | Data that is owned or managed by the Buyer and used for the G-Cloud Services, including backup data. |
| **Service definition(s)** | The definition of the Supplier's G-Cloud Services provided as part of their Application that includes, but isn’t limited to, those items listed in Section 2 (Services Offered) of the Framework Agreement. |
| **Service description** | The description of the Supplier service offering as published on the Digital Marketplace. |
| **Service Personal Data** | The Personal Data supplied by a Buyer to the Supplier in the course of the use of the G-Cloud Services for purposes of or in connection with this Call-Off Contract. |
| **Spend controls** | The approval process used by a central government Buyer if it needs to spend money on certain digital or technology services, see<https://www.gov.uk/service-manual/agile-delivery/spend-controls-check-if-you-need-approval-to-spend-money-on-a-service> |
| **Start date** | The Start date of this Call-Off Contract as set out in the Order Form. |
| **Subcontract** | Any contract or agreement or proposed agreement between the Supplier and a subcontractor in which the subcontractor agrees to provide to the Supplier the G-Cloud Services or any part thereof or facilities or goods and services necessary for the provision of the G-Cloud Services or any part thereof. |
| **Subcontractor** | Any third party engaged by the Supplier under a subcontract (permitted under the Framework Agreement and the Call-Off Contract) and its servants or agents in connection with the provision of G-Cloud Services. |
| **Subprocessor** | Any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract. |
| **Supplier** | The person, firm or company identified in the Order Form. |
| **Supplier Representative** | The representative appointed by the Supplier from time to time in relation to the Call-Off Contract. |
| **Supplier staff** | All persons employed by the Supplier together with the Supplier’s servants, agents, suppliers and subcontractors used in the performance of its obligations under this Call-Off Contract. |
| **Supplier terms** | The relevant G-Cloud Service terms and conditions as set out in the Terms and Conditions document supplied as part of the Supplier’s Application. |
| **Term** | The term of this Call-Off Contract as set out in the Order Form. |
| **Variation** | This has the meaning given to it in clause 32 (Variation process). |
| **Working Days** | Any day other than a Saturday, Sunday or public holiday in England and Wales. |
| **Year** | A contract year. |

## Schedule 7: GDPR Information – Not Applicable

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

### Annex 1: Processing Personal Data

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

1.1 The contact details of the Buyer’s Data Protection Officer are: [Redacted]

1.2 The contact details of the Supplier’s Data Protection Officer are: [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.

|  |  |
| --- | --- |
| **Descriptions** | **Details** |
| Identity of Controller for each Category of Personal Data | **The Buyer is Controller and the Supplier is Processor**The Parties acknowledge that in accordance with paragraph 2-15 Framework Agreement Schedule 4 (Where the Party is a Controller and the other Party is Processor) and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor of the following Personal Data:* Names
* Email addresses
* Telephone numbers
 |
| Duration of the Processing | The duration of the Contract |
| Nature and purposes of the Processing | The nature of the Processing is the collection, storage and use of data in the categories mentioned above.The purpose is for the provision of the Services outlined in Schedule 1. Without the processing of such Personal Data the Supplier will not be able to deliver the Services. |
| Type of Personal Data | As listed above. |
| Categories of Data Subject | Supplier staff, Buyer staff, members of the public. |
| 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 | Retained at least one year following contract expiry. Return or destruction of data to be agreed as part of the Exit Plan. |

### Annex 2: Joint Controller Agreement

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

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of paragraphs 2 to 15 of Schedule 4 of the Framework Agreement (Where one Party is Controller and the other Party is Processor) and paragraphs 17-27 of Schedule 4 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the [**delete as appropriate Supplier/Buyer**]:

(a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;

(b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;

(c) is solely responsible for the Parties’ compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;

(d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and

(e) shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [**Supplier’s/Buyer’s**] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

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

#### 2. Undertakings of both Parties

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

(a) report to the other Party every **[enter number]** months on:

(i) the volume of Data Subject Request (or purported Data Subject Requests) from Data Subjects (or third parties on their behalf);

(ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;

(iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party’s obligations under applicable Data Protection Legislation;

(iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and

(v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law, that it has received in relation to the subject matter of the Contract during that period;

(b) notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1(a)(i) to (v);

(c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses

2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;

(d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;

(e) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;

(f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;

(g) take all reasonable steps to ensure the reliability and integrity of any of its personnel who have access to the Personal Data and ensure that its personnel:

(i) are aware of and comply with their ’s duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information

(ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;

(iii) have undergone adequate training in the use, care, protection and handling of Personal Data as required by the applicable Data Protection Legislation;

(h) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:

(i) nature of the data to be protected;

(ii) harm that might result from a Data Loss Event;

(iii) state of technological development; and

(iv) cost of implementing any measures;

(i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and

(i) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.

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

#### 3. Data Protection Breach

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

(a) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;

(b) all reasonable assistance, including:

(i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;

(ii) co-operation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;

(iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;

and/or

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

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

(a) the nature of the Personal Data Breach;

(b) the nature of Personal Data affected;

(c) the categories and number of Data Subjects concerned;

(d) the name and contact details of the Supplier’s Data Protection Officer or other relevant contact from whom more information may be obtained;

(e) measures taken or proposed to be taken to address the Personal Data Breach; and

(f) describe the likely consequences of the Personal Data Breach.

#### 4. Audit

4.1 The Supplier shall permit:

(a) the Buyer, or a third-party auditor acting under the Buyer’s direction, to conduct, at the Buyer’s cost, data privacy and security audits, assessments and inspections concerning the Supplier’s data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or

(b) the Buyer, or a third-party auditor acting under the Buyer’s direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 GDPR by the Supplier so far as relevant to the contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

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

#### 5. Impact Assessments

5.1 The Parties shall:

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

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

#### 6. ICO Guidance

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

#### 7. Liabilities for Data Protection Breach

**[Guidance:** This clause represents a risk share, you may wish to reconsider the apportionment of liability and whether recoverability of losses are likely to be hindered by the contractual limitation of liability provisions]

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

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

(b) if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request and at the Supplier’s sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or

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

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

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

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

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

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

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

#### 8. Not used

#### 9. Termination

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

#### 10. Sub-Processing

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

(a) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the contract, and provide evidence of such due diligence to the other Party where reasonably requested; and

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

#### 11. Data Retention

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