



# Crown Commercial Service

## G-Cloud 12 Call-Off Contract

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

<b><i>G-Cloud 12 Call-Off Contract</i></b> .....	<b>1</b>
<b>Part A: Order Form</b> .....	<b>2</b>
<b>Schedule 1: Services</b> .....	<b>11</b>
<b>Schedule 2: Call-Off Contract charges</b> .....	<b>11</b>
<b>Part B: Terms and conditions</b> .....	<b>12</b>
<b>Schedule 3: Collaboration agreement – NOT APPLICABLE</b> .....	<b>31</b>
<b>Schedule 4: Alternative clauses – NOT APPLICABLE</b> .....	<b>43</b>
<b>Schedule 5: Guarantee – NOT APPLICABLE</b> .....	<b>48</b>
<b>Schedule 6: Glossary and interpretations</b> .....	<b>56</b>
<b>Schedule 7: GDPR Information</b> .....	<b>67</b>
<b>SPECIAL CONDITIONS</b> .....	<b>71</b>

## Part A: Order Form

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

<b>Digital Marketplace service ID number</b>	482896306300591
<b>Call-Off Contract reference</b>	2522-2021
<b>Call-Off Contract title</b>	Niche Power BI
<b>Call-Off Contract description</b>	Provision of PowerBI As a Service to deliver compliance reports and dashboards
<b>Start date</b>	06/Oct/2021
<b>Expiry date</b>	31/Dec/2021
<b>Call-Off Contract value</b>	£42,900
<b>Charging method</b>	BACS
<b>Purchase order number</b>	[TBC]

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

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

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

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

<b>From the Buyer</b>	The Police and Crime Commissioner for Humberside The Lawns Harland Way Cottingham HU16 5SN
<b>To the Supplier</b>	Marjolo Partners Limited 07973 788551 Acero 1 Concourse Way Sheffield South Yorks S1 2BJ United Kingdom Company number: 09907013
<b>Together the 'Parties'</b>	

## Principal contact details

### For the Buyer:

Title: Commercial & Asset Manager

Name: [REDACTED]

Email: [REDACTED]

Phone: [REDACTED]

### For the Supplier:

Title: CIO & Head of Client Engagement

Name: [REDACTED]

Email: [REDACTED]

Phone: [REDACTED]

## Call-Off Contract term

<b>Start date</b>	This Call-Off Contract Starts on 06/Oct/2021 and is valid for 3 months.
<b>Ending (termination)</b>	<p>The notice period for the Supplier needed for Ending the Call-Off Contract is at least 30 Working Days from the date of written notice for undisputed sums (as per clause 18.6).</p> <p>The notice period for the Buyer is a maximum of 30 days from the date of written notice for Ending without cause (as per clause 18.1).</p>
<b>Extension period</b>	<p>This Call-off Contract can be extended by the Buyer for 4 period(s) of 3 months each, by giving the Supplier 1 months written notice before its expiry. The extension periods are subject to clauses 1.3 and 1.4 in Part B below.</p> <p>Extensions which extend the Term beyond 24 months are only permitted if the Supplier complies with the additional exit plan requirements at clauses 21.3 to 21.8.</p>

## Buyer contractual details

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

<b>G-Cloud lot</b>	<p>This Call-Off Contract is for the provision of Services under:</p> <ul style="list-style-type: none"><li>• Lot 3: Cloud support</li></ul>
<b>G-Cloud services required</b>	<p>The Services to be provided by the Supplier under the above Lot are listed in Framework Section 2 and outlined below:</p> <ul style="list-style-type: none"><li>• Planning</li><li>• Set up and Migration</li><li>• Quality assurance and performance testing</li></ul>
<b>Additional Services</b>	Not applicable

<b>Location</b>	The Services will be delivered to remotely with occasional need to visit the Humberside office
<b>Quality standards</b>	The quality standards required for this Call-Off Contract are monthly review and sign off of deliverables by the Humberside engagement owner
<b>Technical standards:</b>	The technical standards used as a requirement for this Call-Off Contract are aligned to existing business analytics reporting and dashboard standards.
<b>Service level agreement:</b>	The service level and availability criteria required for this Call-Off Contract are monthly review milestones to meet a defined set of outcomes, which are agreed monthly in advance with the Humberside engagement owner
<b>Onboarding</b>	The onboarding plan for this Call-Off Contract is for Marjolo to complete BPSS checks and then each required individual is confirmed through the NPPV3 vetting, performed by Humberside. If required devices are provided and individuals are fully briefed prior to commencement.
<b>Offboarding</b>	The offboarding plan for this Call-Off Contract is for any devices to be returned along with all known materials within the Offboarding window as per contract commitments
<b>Collaboration agreement</b>	Not applicable

<b>Limit on Parties' liability</b>	<p>The annual total liability of either Party for all Property Defaults will not exceed £50,000.</p> <p>The annual total liability for Buyer Data Defaults will not exceed 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term (whichever is the greater).</p> <p>The annual total liability for all other Defaults will not exceed the greater of 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term (whichever is the greater).</p>
<b>Insurance</b>	<p>The insurance(s) required will be:</p> <ul style="list-style-type: none"> <li>• a minimum insurance period of 6 years following the expiration or Ending of this Call-Off Contract]</li> <li>• professional indemnity insurance cover to be held by the Supplier and by any agent, Subcontractor or consultant involved in the supply of the G-Cloud Services. This professional indemnity insurance cover will have a minimum limit of indemnity of £1,000,000 for each individual claim or any higher limit the Buyer requires (and as required by Law)</li> <li>• employers' liability insurance with a minimum limit of £5,000,000 or any higher minimum limit required by Law</li> </ul>
<b>Force majeure</b>	<p>A Party may End this Call-Off Contract if the Other Party is affected by a Force Majeure Event that lasts for more than 15 consecutive days.</p>
<b>Audit</b>	N/A
<b>Buyer's responsibilities</b>	<p>The Buyer is responsible for providing access to Police systems and data</p>

<b>Buyer's equipment</b>	<p>The Buyer's equipment to be used with this Call-Off Contract includes equipment to enable necessary access to Police systems and data.</p> <p>Reason: To allow the team to complete their reporting and dashboard delivery objectives</p>

### Supplier's information

<b>Subcontractors or partners</b>	<p>The following is a list of the Supplier's Subcontractors or Partners (Associate consultants).</p> <p>LWAZI DATA SOLUTIONS LIMITED</p> <p>DANNY CHUNG CONSULTING LIMITED</p>
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### Call-Off Contract charges and payment

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

<b>Payment method</b>	The payment method for this Call-Off Contract is BACS or Faster Payments
<b>Payment profile</b>	The payment profile for this Call-Off Contract is monthly in arrears.
<b>Invoice details</b>	The Supplier will issue electronic invoices monthly in arrears. The Buyer will pay the Supplier within 30 days of receipt of a valid invoice.
<b>Who and where to send invoices to</b>	Invoices will be sent to; Humberside Police Priory Road Hull HU5 5SF; <a href="mailto:accountspayable@humberside.pnn.police.uk">accountspayable@humberside.pnn.police.uk</a>
<b>Invoice information required</b>	All invoices must include Purchase Order number and project reference number/service name.

<b>Invoice frequency</b>	Invoice will be sent to the Buyer monthly
<b>Call-Off Contract value</b>	The total value of this Call-Off Contract is £42,900
<b>Call-Off Contract charges</b>	The breakdown of the charges is £14,300 at each month end.

### Additional Buyer terms

<b>Performance of the Service and Deliverables</b>	<p>This Call-Off Contract will include the following Implementation Plan, exit and offboarding plans and milestones:</p> <ul style="list-style-type: none"> <li>• Review and assessment of reporting and dashboard requirements – 31/10/2021</li> <li>• Understanding data feeds and any old to new system mapping – 31/10/2021</li> <li>• Develop reports and dashboards based on new data sources – 30/11/2021</li> <li>• Redevelop ADRs: Migrate to PowerBI or Update in Oracle Bi as required – 30/11/2021</li> <li>• Input to implementation planning and approach – 30/11/2021</li> <li>• Knowledge transfer as required -31/12/2021</li> <li>• Support Go-Live activities - 31/12/2021</li> </ul>
<b>Guarantee</b>	Not applicable
<b>Warranties, representations</b>	Not applicable
<b>Supplemental requirements in addition to the Call-Off terms</b>	Not applicable



<b>Alternative clauses</b>	Not applicable
<b>Buyer specific amendments to/refinements of the Call-Off Contract terms</b>	Yorkshire & the Humber Regional Bespoke Terms and Conditions
<b>Public Services Network (PSN)</b>	Not applicable
<b>Personal Data and Data Subjects</b>	Not applicable

## 1. Formation of contract

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

## 2. Background to the agreement

- 2.1 The Supplier is a provider of G-Cloud Services and agreed to provide the Services under the terms of Framework Agreement number RM1557.12.
- 2.2 The Buyer provided an Order Form for Services to the Supplier.

<b>Signed</b>	Supplier	Buyer
<b>Name</b>	Mario Del Grosso	[Enter name]
<b>Title</b>	CIO & Head of Client Engagement	[Enter title]
<b>Signature</b>		
<b>Date</b>	06/Oct/2021	[Enter date]

## Schedule 1: Services

Marjolo 'PowerBi As A Service' providing an Analytics Factory approach targeted to support and address Humberside Police requirements around MI reporting and associated dashboards.

Services delivered through experienced PowerBI specialist consultants, with development progressing concurrently across PowerBI and Oracle Bi ADR related activities. The service will provide an ability to scale up as needed, with managed service oversight to provide quality assurance.

## Schedule 2: Call-Off Contract charges

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

- Fixed Price
- 3 month term – with option to extend in 3 monthly increments up to four times
- £42,900

## Customer Benefits

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

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

## Part B: Terms and conditions

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

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

### 2. Incorporation of terms

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

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

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

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

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

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

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

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

### 3. Supply of services

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

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

### 4. Supplier staff

4.1 The Supplier Staff must:

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

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

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

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

## 5. Due diligence

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

## 6. Business continuity and disaster recovery

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

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

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

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

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

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

## 9. Insurance

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



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

## 10. Confidentiality

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

## 11. Intellectual Property Rights

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

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

## 12. Protection of information

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

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

### 13. Buyer data

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

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

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

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

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

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

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

13.6.6 buyer requirements in respect of AI ethical standards.

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

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

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

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

## 14. Standards and quality

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

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

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

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

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

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

## 15. Open source

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

## 16. Security

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

16.6 Any system development by the Supplier should also comply with the government's '10 Steps to Cyber Security' guidance:  
<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>

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

## 17. Guarantee

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

17.1.1 an executed Guarantee in the form at Schedule 5

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

## 18. Ending the Call-Off Contract

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

18.2 The Parties agree that the:

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

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

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

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

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

18.4.2 any fraud

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

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

18.5.2 an Insolvency Event of the other Party happens

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

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

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

## 19. Consequences of suspension, ending and expiry

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

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

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

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

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

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

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

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

- 8.44 to 8.50 (Conflicts of interest and ethical walls)
- 8.89 to 8.90 (Waiver and cumulative remedies)

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

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

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

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

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

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

19.5.5 work with the Buyer on any ongoing work

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

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

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

## 20. Notices

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

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



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

## 21. Exit plan

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

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

## 22. Handover to replacement supplier

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

## 23. Force majeure

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

## 24. Liability

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

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

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

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

## 25. Premises

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

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

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

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

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

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

25.5.2 comply with Buyer requirements for the conduct of personnel

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

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

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

## 26. Equipment

- 26.1 The Supplier is responsible for providing any Equipment which the Supplier requires to provide the Services.
- 26.2 Any Equipment brought onto the premises will be at the Supplier's own risk and the Buyer will have no liability for any loss of, or damage to, any Equipment.
- 26.3 When the Call-Off Contract Ends or expires, the Supplier will remove the Equipment and any other materials leaving the premises in a safe and clean condition.

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

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

## 28. Environmental requirements

- 28.1 The Buyer will provide a copy of its environmental policy to the Supplier on request, which the Supplier will comply with.
- 28.2 The Supplier must provide reasonable support to enable Buyers to work in an environmentally friendly way, for example by helping them recycle or lower their carbon footprint.

## 29. The Employment Regulations (TUPE)

- 29.1 The Supplier agrees that if the Employment Regulations apply to this Call-Off Contract on the Start date then it must comply with its obligations under the Employment Regulations and (if applicable) New Fair Deal (including entering into an Admission Agreement) and will indemnify the Buyer or any Former Supplier for any loss arising from any failure to comply.
- 29.2 Twelve months before this Call-Off Contract expires, or after the Buyer has given notice to End it, and within 28 days of the Buyer's request, the Supplier will fully and accurately disclose to the Buyer all staff information including, but not limited to, the total number of staff assigned for the purposes of TUPE to the Services. For each person identified the Supplier must provide details of:
  - 29.2.1 the activities they perform
  - 29.2.2 age
  - 29.2.3 start date
  - 29.2.4 place of work
  - 29.2.5 notice period
  - 29.2.6 redundancy payment entitlement
  - 29.2.7 salary, benefits and pension entitlements

- 29.2.8 employment status
- 29.2.9 identity of employer
- 29.2.10 working arrangements
- 29.2.11 outstanding liabilities
- 29.2.12 sickness absence
- 29.2.13 copies of all relevant employment contracts and related documents
- 29.2.14 all information required under regulation 11 of TUPE or as reasonably requested by the Buyer

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

### 30. Additional G-Cloud services

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

## 31. Collaboration

- 31.1 If the Buyer has specified in the Order Form that it requires the Supplier to enter into a Collaboration Agreement, the Supplier must give the Buyer an executed Collaboration Agreement before the Start date.
- 31.2 In addition to any obligations under the Collaboration Agreement, the Supplier must:
  - 31.2.1 work proactively and in good faith with each of the Buyer's contractors
  - 31.2.2 co-operate and share information with the Buyer's contractors to enable the efficient operation of the Buyer's ICT services and G-Cloud Services

## 32. Variation process

- 32.1 The Buyer can request in writing a change to this Call-Off Contract if it isn't a material change to the Framework Agreement/or this Call-Off Contract. Once implemented, it is called a Variation.
- 32.2 The Supplier must notify the Buyer immediately in writing of any proposed changes to their G-Cloud Services or their delivery by submitting a Variation request. This includes any changes in the Supplier's supply chain.
- 32.3 If Either Party can't agree to or provide the Variation, the Buyer may agree to continue performing its obligations under this Call-Off Contract without the Variation, or End this Call-Off Contract by giving 30 days notice to the Supplier.

## 33. Data Protection Legislation (GDPR)

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

## Schedule 3: Collaboration agreement – 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:



Collaboration Agreement Schedule 1: NOT APPLICABLE

List of contracts

Collaboration supplier	Name/reference of contract	Effective date of contract

Collaboration Agreement Schedule 2: NOT APPLICABLE

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

and

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

### Whereas:

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

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

Suggested headings are as follows:

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



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

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

### Definitions and interpretation

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

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

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

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

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

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

Unless the context otherwise requires:

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

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

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

## Guarantee and indemnity

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

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

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

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

## Obligation to enter into a new contract

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

## Demands and notices

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

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

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

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

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

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

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

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

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

#### Beneficiary's protections

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

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

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

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

The Buyer will be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes. The making of a demand (whether effective, partial or

defective) relating to the breach or non-performance by the Supplier of any Guaranteed Obligation will not preclude the Buyer from making a further demand relating to the same or some other Default regarding the same Guaranteed Obligation.

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

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

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

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

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

## Representations and warranties

The Guarantor hereby represents and warrants to the Buyer that:

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

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

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

## Payments and set-off

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

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

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

## Guarantor's acknowledgement

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

## Assignment

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

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

## Severance

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the remainder of the

provisions will continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

### Third-party rights

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

### Governing law

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

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

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

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

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

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

EXECUTED as a DEED by

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

Director

Director/Secretary

## Schedule 6: Glossary and interpretations

In this Call-Off Contract the following expressions mean:

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



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

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

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

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

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

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

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

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



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

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

## Schedule 7: GDPR Information – Not Required

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

### Annex 1: Processing Personal Data

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

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

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

	<p>The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <p><b>[Insert the scope of Personal Data which the purposes and means of the Processing is determined by the both Parties together]</b></p> <p><b>The Parties are Independent Controllers of Personal Data</b></p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> <li>• Business contact details of Supplier Personnel for which the Supplier is the Controller</li> <li>• Business contact details of any directors, officers, employees, agents, consultants and contractors of Buyer (excluding the Supplier Personnel) engaged in the performance of the Buyer's duties under the Contract) for which the Buyer is the Controller</li> <li>• <b>[Insert the scope of other Personal Data provided by one Party who is Controller to the other Party who will separately determine the nature and purposes of its Processing the Personal Data on receipt e.g. where (1) the Supplier has professional or regulatory obligations in respect of Personal Data received, (2) a standardised service is such that the Buyer cannot dictate the way in which Personal Data is processed by the Supplier, or (3) where the Supplier comes to the transaction with Personal Data for which it is already Controller for use by the Buyer]</b></li> </ul> <p>[Guidance where multiple relationships have been identified above, please address the below rows in the table for in respect of each relationship identified]</p>
Duration of the Processing	<b>[Clearly set out the duration of the Processing including dates]</b>
Nature and purposes of the Processing	<p><b>[Please be as specific as possible, but make sure that you cover all intended purposes.]</b></p> <p>The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or</p>

	alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment Processing, statutory obligation, recruitment assessment etc]
Type of Personal Data	<b>[Enter type of Personal Data.</b> Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]
Categories of Data Subject	<b>[Enter categories.</b> Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under Union or Member State law to preserve that type of data	<b>[Describe how long the data will be retained for, how it be returned or destroyed]</b>

Annex 2: Joint Controller Agreement  
NOT USED

## SPECIAL CONDITIONS

### INDEX

1. DEFINITIONS
2. PRIORITY OF TERMS AND CONDITIONS
3. INDEMNITY
4. WORK ON THE PREMISES
5. SUSPENSION
6. REPUTATION
7. PUBLICITY
8. VETTING
9. INDEPENDENT POLICE COMPLAINT COMMISSION
10. TRANSPARENCY
11. THIRD PARTY RIGHTS
12. BARRED LIST
13. DATA PROTECTION
14. IMPROVING VISIBILITY OF SUBCONTRACT OPPORTUNITIES AVAILABLE TO SMEs AND VCSEs IN THE SUPPLY CHAIN
15. MANAGEMENT CHARGES AND INFORMATION
16. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS
17. ANTI-BRIBERY AND FRAUD
18. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS
19. OFFICIAL SECRETS ACT AND CONFIDENTIAL INFORMATION

### 1. DEFINITIONS

In these Special Conditions, the following definitions apply:

**“Authority”** means the contracting Police and Crime Commissioner or Police, Fire and Crime Commissioner referred to in the Contract or any successor organisation responsible for the tendering, award and overall management (including the issue of any variations and modifications to Contract) of the Contract as the contracting legal entity acting on behalf of the Chief Constable which is the legal entity for the purposes of the operational delivery of the relevant police force.

**“Chief Constable”** means the Chief Constable of the same relevant policing area as the Authority.

**“Contract”** means the contract between the Authority and the Supplier for the supply of Goods and Services.

**“Controller”** has the meaning set out in the Data Protection Legislation.

**“Data Processing Details”** means the description of the data Processing being carried out under the Contract, the details of which are set out in the data processing agreement with the relevant Data Controller.

**“Data Protection Legislation”** means the DPA 2018, the GDPR, the applied GDPR (as applied by the DPA 2018), regulations made under the DPA 2018, regulations made under section 2(2) of the European Communities Act 1972 which relate to the GDPR or Law Enforcement Directive (Directive (EU) 2016/680) and post transition period the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 to be known as UK GDPR or any other post transition period Data Protection Legislation enacted by the UK Parliament and any replacement or supplementary legislation coming into effect from time to time.

**“Data Subject”** has the meaning set out in the Data Protection Legislation.

**“DPA 2018”** means the Data Protection Act 2018;

**“Goods”** means the goods (or any part of them) set out in the Purchase Order.

**“Intellectual Property Rights”** means patents, copyright, registered and unregistered design rights, utility models, trade marks (whether or not registered), database rights, rights in know-how and confidential information and all other intellectual and industrial property rights and similar or analogous rights existing under the laws of any country and all rights to apply for or register such rights.

**“Laws”** means any law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body or any approval of any local authority or statutory undertaker having jurisdiction in relation to the Goods and Services or with whose systems the Goods and Services are, or are to be, connected, from time to time.

**“Personal Data”** has the meaning set out in the Data Protection Legislation.

**“Police Data”** means any Personal Data for which the Chief Constable is the Controller.

**“Premises”** means the Authority’s premises where the Goods and/or Services are to be delivered or performed.

**“Process”** has the meaning set out in the Data Protection Legislation.

**“Processor”** has the meaning set out in the Data Protection Legislation.

**“Purchase Order”** means an official purchase order raised against the Contract by the Authority.

**“Services”** means the services to be provided by the Supplier under the Contract.

**“SME”** means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

**“Special Conditions”** means the terms and conditions set out in this document.

**“Sub-processor”** means any third party appointed to process Personal Data on behalf of the supplier related to this Contract.

**“Supplier”** means the supplier referred to in the Contract.

**“VCSE”** means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

## **2. INDEMNITY**

- 2.1 References to any indemnity being given by the Supplier to the Authority shall be construed as being given to the relevant Chief Constable.

## **3. PRIORITY OF TERMS AND CONDITIONS**

- 3.1 If there is any ambiguity or inconsistency in or between the call-off terms and conditions and these special conditions, these special conditions prevail.

## **4. WORK ON THE PREMISES**

- 4.1 If the Contract involves any Goods and Services which the Supplier delivers or performs on the Premises then, when required, the Supplier and their employees, sub-contractors and their employees shall comply with any security requirements including a right to search when entering or leaving the Premises and being escorted in certain areas. The Authority reserves the right to remove from the Premises anyone not complying with the Authority’s security arrangements or suspected of being under the influence of alcohol, or any other substance which has the effect of impairing performance.
- 4.2 The Authority’s decision as to whether any person is to be refused access to any Premises occupied by or on behalf of the Authority shall be final and conclusive and the Supplier shall replace promptly any such person to ensure that its requirements under the Contract are met.
- 4.3 The Supplier shall bear the cost of or costs arising from any decision of the Authority under this clause 4.

## **5. SUSPENSION**

- 5.1 Without limiting its other rights or remedies the Authority may suspend the Contract in whole or in part by giving written notice of such suspension to the Supplier if the Supplier or any of their employees or agents are or become;
- (a) subject to a criminal investigation in respect of allegations arising out of or relating to their professional practice whether in respect of work undertaken in performance of the Contract or otherwise; or
  - (b) subject to a criminal investigation relating to an allegation, which if substantiated, would constitute a breach of the terms of the Contract; or



- (c) subject to any allegation of professional negligence;
- (d) in the reasonable opinion of the Authority, subject to a material detrimental change in the financial standing and/or credit rating which adversely impacts on the Supplier's ability to deliver the Goods or supply the Services under the Contract or could be reasonably expected to have an adverse impact on the Supplier's ability to deliver the Goods or supply the Services under the Contract;
- (e) in the reasonable opinion of the Authority, involved in any fraudulent activities or misapplication of funds (whether involving the Contract or not); or
- (f) subject to investigation by a relevant regulatory body in respect of any alleged breach of a relevant code of practice.

5.2 The Supplier must inform the Authority immediately upon becoming aware of any of the matters set out above.

5.3 The Authority shall have no liability to accept delivery of any Goods or performance of any Services during the period of suspension and the sums payable by the Authority under the Contract shall be reduced during the period of suspension by an amount equivalent to the value of the Goods and Services suspended for the duration of such suspension and the Authority shall have no liability whatsoever to make any payment to the Supplier of any sums withheld during the period of suspension.

5.4 For the avoidance of doubt the Authority will be entitled during any period of suspension to engage other Supplier to provide the Goods and / or Services which the Supplier is unable to provide by reason of the suspension.

5.5 Following a suspension pursuant to clause 5.1 above the Authority shall keep the matter under review and should the reasons for the suspension be resolved to the satisfaction of the Authority then the Authority may give written notice lifting suspension of the Contract.

5.6 If the investigations or allegations at clause 5.1(a) are substantiated, this shall entitle the Authority to terminate the Contract with immediate effect.

## **6. REPUTATION**

6.1 The Supplier shall not, and shall procure that its employees or subcontractors shall not:

- (a) do any act or make any omission that has or could reasonably be expected to have an adverse impact upon the security of the business, operations, systems or properties or Premises of the Authority;
- (b) take any action which might or shall:
  - (i) harm or be prejudicial to the public confidence in the Authority and/or the Chief Constable or to its public image(s); or
  - (ii) bring the Authority and/or the Chief Constable into disrepute.

6.2 Without limiting clause 6.1, the Supplier shall comply with the provisions of the standards, policies, procedures and regulations provided from time to time to the Supplier by the Authority.

## **7. PUBLICITY**

7.1 Unless expressly permitted in writing by the Authority, the Supplier shall not publish or permit to be published either alone or in conjunction with any other person any information, articles, photographs or other illustrations relating to or connected with the Contract.

7.2 This Contract shall not entitle the Supplier or any of their sub-contractors, agents or employees to endorse its goods or services with any reference to the Authority, the relevant police force or Chief Constable and the Supplier shall not exhibit for advertising or any other reason any goods or services or equipment supplied under the Contract which can be identified with the Authority without the prior written consent of the Authority.

7.3 Clause 7 includes any such reference made in any form of written, pictorial or audible advertising campaign, marketing, sales or promotion campaign.

## **8. VETTING**

- 8.1 The Authority may request and such employees of the Supplier, or any sub-contractor, who are involved in delivering the Goods or performing the Services that it deems necessary to undergo a security vetting procedure or have the Authority's approval and secure vetting to the appropriate level prior to commencing and work on the Contract.
- 8.2 To facilitate the relevant vetting when so requested by the Authority, the Supplier shall provide a list of the names and addresses of all persons (if any) who it is expected will be engaged in the provision of the Goods and Services, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably require to permit appropriate security checking. This may include the requirement for the individuals concerned to provide personal details about family members and financial circumstances and make a personal declaration as to the accuracy of the information provided.
- 8.3 For the avoidance of doubt, where the Authority has requested employees to undergo security vetting, only employees who have completed the vetting process and/or received written confirmation of their successful application can work on the Contract.
- 8.4 If requested by the Authority, the Supplier will be responsible for the vetting costs of all of the Supplier's employees who are required to be vetted under clause 8.1 above.
- 8.5 The Authority does not accept liability for delays relating to the period between vetting forms being submitted to the Authority and confirmation to the Supplier of the vetting application outcome.
- 8.6 The outcome of vetting and the decision from the Authority is final and binding. Employees who have not received vetting clearance by the Authority are not permitted to work on the Contract and the Supplier shall replace any of its employees who, the Authority shall have decided in its absolute discretion, have failed the appropriate security checking. The Authority shall not have to disclose why an employee has failed security checking. Following the removal of any of the Supplier's employees for failing vetting, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Contract.
- 8.7 The Supplier is responsible for ensuring all personnel supporting the contract, including but not limited to, sub-contractors employees are successfully vetted in line with any requested vetting by the Authority and shall ensure throughout the term of the Contract that they are at all times compliant with the vetting requirements of the Authority.
- 8.8 It is the Supplier's responsibility to ensure all staff working on the Contract in line with any requested vetting by the Authority and supply any information required by the Authority's vetting unit and any changes in circumstances that occur after vetting has taken place during the term of the Contract are notified to the Authority. Any delay in the performance of the Contract resulting from the Supplier's employees or sub-contractor employees not submitting fully and accurately completed forms and submitting any further information required or from declined vetting applications shall be the responsibility of the Supplier.
- 8.9 The Supplier shall keep an accurate and up to date record of their vetted employees and sub-contractors employees and must ensure that vetting remains current for any individual involved in the delivery of the Contract.

## **9. INDEPENDENT POLICE COMPLAINT COMMISSION**

The Supplier must ensure that all personnel are made aware of the ability of the Independent Office for Police Conduct to investigate any matters reported to them under the Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015 including but not limited to the conduct of the Supplier and its personnel.

## **10. TRANSPARENCY**

- 10.1 Following the publication of the Statutory Instrument 2012 – Amendment 2479 (<http://www.legislation.gov.uk/ukxi/2012/2479/made>), all Police Forces of England and Wales have an obligation to make publicly available a copy of each contract with a value exceeding £10,000 to which (i) the elected local policing body, or (ii) the chief officer of the police force maintained by the body, is or is to be a party.
- 10.2 As part of the transparency agenda, Government has made the following commitments with regard to procurement and contracting:
  - (a) All new contracts over the value of £10,000 to be published in full online;

- (b) All items of spending over £500 per month to be published online.
- 10.3 To meet this requirement the Authority intends to publish all contracts over a value exceeding £10,000 on the Freedom of Information (FOI) page of the Bluelight Procurement Database ([www.blpd.gov.uk](http://www.blpd.gov.uk)).
- 10.4 The full list of criteria for which redactions may be permitted as set out as follows:
- (a) Exemptions (absolute or qualified) provided for by the Freedom of Information Act 2000, regarding the disclosure of information;
  - (b) Provisions provided for in the Public Contracts Regulations 2015, regarding the disclosure of confidential information;
  - (c) Protection of personal privacy as required under the Data Protection Act;
  - (d) The protection of Intellectual Property Rights (IPR);
  - (e) Third party confidential information e.g. contracts with foster carers and child minders.
- 10.5 Information and guidance on understanding exemptions and other FOI matters can be accessed from the Information Commissioner's Office [www.ico.gov.uk](http://www.ico.gov.uk).
- 11. THIRD PARTY RIGHTS**
- 11.1 Except as expressly provided in clause 11.2(b) below, a person who is not party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 11.2 The Chief Constable also has the benefit of the Contract and is able to enforce all the Supplier's obligations set out in the Contract.
- 11.3 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to any other party.
- 12. BARRED LIST**
- 12.1 This clause 12 shall apply where the Services being provided under the Contract include functions of a public nature which relate to policing and law enforcement.
- 12.2 In accordance with the Part 4A of the Police Act 1996, no employees of the Supplier, or any subcontractor, are permitted to be involved in the provision of the Services if they are on the police barred list published from time to time by the College of Policing ("Barred List").
- 12.3 The Supplier is responsible for ensuring all personnel supporting the contract, including but not limited to, sub-contractors employees are not on the Barred List and shall ensure throughout the term of the Contract that they are at all times compliant with the requirements of clause 12.2 above.
- 12.4 To enable the Authority to comply with its duties under Part 4A of the Police Act 1996, when so requested by the Authority, the Supplier shall provide a list of the names of all persons who it is expected will be engaged in the provision of the Goods and/or performance of the Services, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably require to permit the Barred List and the Police Advisory List to be checked.
- 12.5 The outcome of any check made pursuant to clause 12.4 above and the decision from the Authority in respect of the same is final and binding. Employees who are found by the Authority or notified to the Authority as being on the Barred List are not permitted to work on this Contract and the Supplier shall replace any of its employees or sub-contractor's employees who are on the Barred List.
- 12.6 Following the removal of any of the Supplier's or sub-contractor's employees in accordance with clause 12.5 above, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Contract.
- 13. DATA PROTECTION**
- 13.1 The Supplier warrants that it will comply with the Data Protection Legislation and this clause is in addition to, and does not relieve, remove or replace the Supplier's obligations under the Data Protection Legislation.
- 13.2 The Supplier agrees that if it acts at any time under this Contract as a Processor of the Police Data, it shall enter into a data processing contract with the Chief Constable, such data processing contract to

include the Data Processing Details setting out the scope, nature and purpose of the Processing by the Supplier, the duration of the Processing, the types of the Police Data and categories of Data Subject involved and the obligations and rights of the Supplier and the Chief Constable.

13.3 The Supplier shall comply at all times with its obligations under the data processing contract referred to in clause 13.2 above and shall only Process the Police Data to the extent, and in such a manner, as is necessary for the purposes identified by the Chief Constable and in the manner specified by the Chief Constable and for no other purpose or in any manner except on the written instructions of the Chief Constable or as required by any Laws. The Supplier shall not determine at any time the purpose or means of the Processing and, if it is so required by any Laws, the Supplier shall promptly notify the Chief Constable before Processing the Police Data unless prohibited by such Laws. The Supplier will keep a record of any Processing of the Police Data it carries out under the Contract.

13.4 The Supplier shall comply with the Chief Constable's baseline security requirements as updated from time to time by the relevant body and notified to the Supplier.

13.5 If requested by the Chief Constable, the Supplier to enter into a Security Aspects Letter ("SAL") with the relevant force and the Supplier shall comply with that the protocols set out in that SAL. In the event the Supplier fails to adhere to the SAL protocols, the Authority shall have the right to terminate this Contract and to recover from the Supplier the amount of any loss resulting from any such termination.

#### **14. IMPROVING VISIBILITY OF SUBCONTRACT OPPORTUNITIES AVAILABLE TO SMES AND VCSES IN THE SUPPLY CHAIN**

14.1 This clause 14 and clause 15 shall apply where the advertised contract value for the Contract was valued above £5 million per annum,

14.2 The Supplier shall:

- (a) subject to clause 14.4, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services above a minimum threshold of £25,000 that arise during the term of the Contract;
- (b) within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;
- (c) monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the term of the Contract;
- (d) provide reports on the information at clause 14.2(c) to a Authority in the format and frequency as reasonably specified by the Authority; and
- (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

14.3 Each advert referred to at clause 14.2(a) above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

14.4 The obligation at clause 14.2(a) shall only apply in respect of subcontract opportunities arising after the contract award date.

14.5 Notwithstanding clause 14.2, the Authority may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

#### **15. MANAGEMENT CHARGES AND INFORMATION**

15.1 In addition to any other management information requirements set out in this Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME Management Information (MI) Reports to the Authority which incorporate the data described in the MI Reporting template which is:

- (a) the total contract revenue received directly on a specific contract;
- (b) the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
- (c) the total value of sub-contracted revenues to SMEs and VCSEs.

15.2 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by the Authority from time to time. The Supplier shall use the initial MI Reporting Template which is set out in the Annex to Public Procurement Policy Note 01/08: Supply Chain Visibility Action and which may be changed from time to time (including the data required and/or format) by the Authority by issuing a replacement version. The Authority shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.

15.3 The Supplier further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Authority.

## **16. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS**

16.1 The Supplier acknowledges that the Authority and the Chief Constable are subject to the requirements of the Freedom Of Information Act 2000, (FOIA), and the Environmental Information Regulations 2004 (EIR) and the Supplier agrees to assist and cooperate with the Authority and the Chief Constable (at the Supplier's expense) as mandated by the Authority or Chief Constable in relation to these laws.

16.2 Any Requests received by the Supplier shall be forwarded to the Authority or Chief Constable immediately.

16.3 The provisions of this clause 16 shall extend to sub-contractors and the Supplier shall ensure compliance with this requirement.

16.4 The Supplier acknowledges that the Authority and the Chief Constable may, acting in accordance with the FOIA, or the EIR be obliged to disclose information relating to the Contract:

(a) without consulting with the Supplier; or

(b) following consultation with the Supplier and having taken the Supplier's views into account: or

(c) in accordance with legislation and procedural transparency requirements.

16.5 Where it is necessary for the Supplier to provide information to the Authority which it believes to be information falling into the exemptions set out in the FOIA ("Exempt Information"), it shall state in writing to the Authority the nature of the information and the relevant exemption. The Authority will use reasonable endeavours to consult with the Supplier before disclosing such information under the FOIA. The Supplier acknowledges that the final decision whether to disclose such information will rest with the Authority and not with the Supplier. Nothing contained in this Contract or any documents or negotiations relating to this Contract shall prevent the Authority from disclosing any information which (in the Authority's reasonable opinion or in accordance with any recommendation, notice or decision of a competent Authority) it is required to disclose under the FOIA.

16.6 When requested to do so by the Authority, the Supplier shall promptly provide the information in its possession relating to this Contract and shall assist and co-operate with the Authority to enable it to respond to a Request within the time limit set out in the relevant legislation.

16.7 The Supplier shall observe the Authority's Retention and Destruction Policy (details of which shall be provided by the Authority to the Supplier upon request) and shall not destroy information other than in accordance with this policy. If the Authority notifies the Supplier of a request for information held by the Supplier, which is due for destruction the Supplier shall immediately suspend destruction of that information to allow disclosure to take place. Upon the termination of this Contract the parties shall agree which party has the control of the retained information. Should the Supplier retain control of the information this clause 16 shall remain in force beyond the termination of this Contract.

16.8 The Supplier shall maintain an adequate records management system which will enable it to access the information within the time limits prescribed.

16.9 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, proceedings and liabilities that the Authority directly incurs due to the Supplier's or any sub-contractor breach of this clause 16 or any part of it.

## **17. ANTI-BRIBERY AND FRAUD**

17.1 The Supplier shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act relating to obtaining or the signing of the Contract or any other contract with the

Authority or any other public body or showing or refraining from showing favour or disfavour to any person, in relation to the Contract or any other Contract with the Authority, or if similar acts have been done by any person employed by the Supplier, or acting on the Supplier's behalf (whether with or without the knowledge of the Supplier).

17.2 The Supplier warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Supplier or any other public body in connection with the Contract.

17.3 The Supplier shall:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
- (c) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 17.3(b), and will enforce them where appropriate;
- (d) promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Contract;
- (e) immediately notify the Authority if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Contract); and
- (f) ensure that all persons associated with the Supplier or other persons who are performing services in connection with this Contract comply with this clause 17.

17.4 The Supplier shall not engage in any activity practice or conduct which would constitute an offence under the Prevention of Corruption Acts 1889 to 1916 or Fraud Act 2006.

17.5 The Supplier shall not receive any fee or reward the receipt of which is offence under the sub-section (2) of Section 117 of the Local Government Act 1972.

17.6 Breach of this clause 17 shall entitle the Authority to terminate the Contract with immediate effect.

17.7 In the event of any breach of this clause 17 by the Supplier or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Supplier):

- (a) the Supplier shall immediately give the Authority full details of any such breach and shall co-operate fully with the Authority in disclosing information and documents which the Authority may request; and/or
- (b) the Authority shall (without prejudice to any of its rights or remedies under this Contract or otherwise) be entitled by notice in writing to terminate this Contract immediately; and
- (c) the Supplier shall be liable for and shall indemnify and keep the Authority and the Chief Constable indemnified in respect of any and all loss resulting from such termination.

17.8 In any dispute, difference or question arising in respect of:

- (a) the interpretation of this clause 17; or
- (b) the right of the Authority to terminate this Contract; or
- (c) the amount or value of any gift, consideration or commission

.1 the decision of the Authority shall be final and conclusive.

## **18. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS**

18.1 In performing its obligations under this Contract, the Supplier shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
  - (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
  - (c) include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause 18.
  - (d) notify the Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.
  - (e) maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Authority in connection with this Contract; and permit the Authority and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 18.
- 18.2 The Supplier represents and warrants that it not has been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 18.3 The Authority may terminate this Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this clause 18.
- 19. OFFICIAL SECRETS ACT AND CONFIDENTIAL INFORMATION**
- 19.1 The Supplier undertakes to comply with the provisions of the Official Secrets Acts 1911 to 1989. This may include if reasonably requested to do so by the Authority the requirement for the Supplier to have individuals involved in the delivery of this Contract to sign a copy of the Official Secrets Act.
- 19.2 The Supplier shall keep confidential all police operational matters, processes or initiatives which are of a confidential nature ("Confidential Information") and have been disclosed to the Supplier by the Authority (or its agents) or acquired by the Supplier from the Authority (or its agents). The Supplier shall restrict disclosure of the confidential material to those of its employees, agents or subcontractors as need to know the information to enable them to carry out the Supplier's obligations to the Authority and shall ensure that all employees, agents or subcontractors are subject to similar obligations of confidentiality as those imposed on the Supplier. Under no circumstances without the prior approval of the Authority shall such information be published, copied, amended or otherwise disclosed to any other persons and the Supplier shall ensure that all its subcontractors are also aware of their obligations under this clause.
- 19.3 This clause shall not apply to information to be disclosed by law as long as the Supplier shall notify the Authority and agree the nature of any such disclosure with the Authority in advance or which is in the public domain other than by a breach of this clause.
- 19.4 If the Authority has required the Supplier or its sub-contractors or suppliers to sign a mutual confidentiality agreement, the Supplier shall comply and procure its sub-contractors or suppliers shall comply at all times with its obligations under that mutual confidentiality agreement.
- 19.5 The provisions of the previous provisions of this clause shall apply during the continuance of this Contract and after it has been terminated however arising.