



# Crown Commercial Service

## G-Cloud 12 Call-Off Contract

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

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## Part A: Order Form

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

<b>Digital Marketplace service ID number</b>	856761999171203
<b>Call-Off Contract reference</b>	PROC 396-2022
<b>Call-Off Contract title</b>	Darktrace Enterprise Immune System
<b>Call-Off Contract description</b>	Provision of SIEM tool Darktrace licences to CMA
<b>Start date</b>	01/04/2022
<b>Expiry date</b>	31/03/2024
<b>Call-Off Contract value</b>	£299,960 (excluding VAT)
<b>Charging method</b>	BACS, Annually in advance
<b>Purchase order number</b>	To be provided within 1 week of Contract being signed

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

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

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

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

<b>From the Buyer</b>	<p>Competition and Markets Authority</p> <p>020 3738 6000</p> <p>Buyer's main address:</p> <p>The Cabot,</p> <p>25 Cabot Square,</p> <p>London,</p> <p>E14 4QZ</p>
<b>To the Supplier</b>	<p>iSystems</p> <p>020 8050 1372</p> <p>Devonshire House</p> <p>19-31 Elmfield Road</p> <p>Bromley</p> <p>BR1 1LT</p>
<b>Together the 'Parties'</b>	

### Principal contact details

#### For the Buyer:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### For the Supplier:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## Call-Off Contract term

<b>Start date</b>	<p>This Call-Off Contract Starts on <b>01/04/22</b> and is valid for <b>24 Months</b></p> <p>The date and number of days or months is subject to clause 1.2 in Part B below.</p>
<b>Ending (termination)</b>	<p>The notice period for the Supplier needed for Ending the Call-Off Contract is at least <b>30</b> Working Days from the date of written notice for undisputed sums (as per clause 18.6).</p> <p>The notice period for the Buyer is a maximum of <b>30</b> days from the date of written notice for Ending without cause (as per clause 18.1).</p>
<b>Extension period</b>	<p>This Call-off Contract can be extended by the Buyer for <b>2</b> period(s) of up to <b>12 months each</b>, by giving the Supplier <b>3 months</b> written notice before its expiry. The extension periods are subject to clauses 1.3 and 1.4 in Part B below.</p> <p>Extensions which extend the Term beyond 24 months are only permitted if the Supplier complies with the additional exit plan requirements at clauses 21.3 to 21.8.</p>

## Buyer contractual details

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

<b>G-Cloud lot</b>	<p>This Call-Off Contract is for the provision of Services under:</p> <ul style="list-style-type: none"> <li>• Lot 3: Cloud support</li> </ul>
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<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> <table><tr><td>Product/Service</td><td>QTY</td><td>Term (months)</td></tr><tr><td>Enterprise Immune System (IPs)</td><td>2500</td><td>24</td></tr><tr><td></td><td></td><td></td></tr><tr><td>Comprising:</td><td></td><td></td></tr><tr><td><i>Large Appliance</i></td><td>1</td><td>24</td></tr><tr><td><i>Cloud V-Sensor</i></td><td>25</td><td>24</td></tr><tr><td><i>Cloud O-Sensor</i></td><td>150</td><td>24</td></tr></table> <p>Plus, the following account services:</p> <ul style="list-style-type: none"><li>• Installation Services</li><li>• Standard Support Services</li><li>• eLearning Training</li><li>• Public Online Training</li><li>• Private Training (Remote) (x2)</li></ul>	Product/Service	QTY	Term (months)	Enterprise Immune System (IPs)	2500	24				Comprising:			<i>Large Appliance</i>	1	24	<i>Cloud V-Sensor</i>	25	24	<i>Cloud O-Sensor</i>	150	24
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Comprising:																						
<i>Large Appliance</i>	1	24																				
<i>Cloud V-Sensor</i>	25	24																				
<i>Cloud O-Sensor</i>	150	24																				
<b>Additional Services</b>	<b>Non Applicable</b>																					
<b>Location</b>	<p>The Services will be delivered to CMA office <b>The Cabot</b> in Canary Wharf.</p> <p><b>25 Cabot Square, London, E14 4QZ</b></p> <p><b>The Darktrace application will also connect to the following locations:</b></p> <ul style="list-style-type: none"><li>• Microsoft Azure North Europe and UK South</li><li>• Amazon Web Services EU West</li><li>• Edinburgh</li><li>• Cardiff</li><li>• Belfast</li><li>• Any new CMA offices or cloud data centre locations</li><li>• Remote Office Workers</li></ul>																					
<b>Quality standards</b>	<p>Provide information as detailed in the relevant Service Description, and you should only use those quality standards that were used as a requirement or acceptance criteria.</p> <p>These can be found in the Darktrace’s EULA and Support Terms (annexed)</p>																					
<b>Technical standards:</b>	<p>The technical standards used as a requirement for this Call-Off Contract are <b>referenced in the Darktrace EULA</b></p>																					

<b>Service level agreement:</b>	The service level and availability criteria required for this Call-Off Contract are referenced in <b>Darktrace's Support Services Terms for 'Standard Support Services'</b> .
<b>Onboarding</b>	<p>The onboarding plan for this Call-Off Contract is as follows:</p> <ol style="list-style-type: none"> <li>1. Expected appliance ship time: 3-5 Business Days</li> <li>2. Installation: 1-2 Hours</li> <li>3. Time to value (log ins issued): ~7-10 business days <ol style="list-style-type: none"> <li>a. Week 1: Kick Off session</li> <li>b. Week 2-4: Weekly sessions to tune models (if required) and enable operationalisation/workflow</li> </ol> </li> </ol>
<b>Offboarding</b>	<p>The offboarding plan for this Call-Off Contract is <b>to be confirmed, by the supplier, at the latest 6 months before the end of the contract</b> as described in the UELA, section 13 (Termination).</p> <p>This will include an exit plan of processes with exiting the Call-Off Contract and data standards for migration in accordance with clause 21.</p> <ul style="list-style-type: none"> <li>• Removal of supplier's devices from CMA premises</li> <li>• Transfer and removal of all CMA data</li> <li>• Off-boarding of all CMA devices (Network and firewalls, servers, end points)</li> <li>• Removal of any other access to CMA systems</li> </ul>
<b>Collaboration agreement</b>	Not Applicable
<b>Limit on Parties' liability</b>	<p>The annual total liability for Buyer Data Defaults will not exceed <b>100%</b> 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 <b>100%</b> of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term (whichever is the greater).</p> <p>Clause 24.1 in Part B below provides a definition of Other Defaults</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 <b>30</b> consecutive days.</p> <p>This section relates to clause 23.1 in Part B below.</p>
<b>Audit</b>	<p>The following Framework Agreement audit provisions will be incorporated under clause 2.1 of this Call-Off Contract to enable the Buyer to carry out audits</p> <p>clauses 7.4 to 7.13 of the Framework Agreement.</p>
<b>Buyer's responsibilities</b>	<p>The Buyer is responsible for any systems (outside of the Darktrace appliances and sensors) necessary to fulfil the implementation of the subscription licences.</p> <ul style="list-style-type: none"> <li>• Installation of V-Senors and O-Sensors including necessary network paths</li> <li>• Appropriate firewall and switch configuration to allow monitoring to occur</li> <li>• Provision of any necessary service accounts</li> </ul>
<b>Buyer's equipment</b>	<p>The Buyer's equipment to be used with this Call-Off Contract includes any systems (outside of the Darktrace appliances and sensors) required to implement the services. Supplier shall be responsible for confirming the final requirements to allow implementation into the buyer's environment.</p>

## Supplier's information

<b>Subcontractors or partners</b>	Not applicable.
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## Call-Off Contract charges and payment

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

<b>Payment method</b>	The payment method for this Call-Off Contract is <b>BACS</b>
<b>Payment profile</b>	The payment profile for this Call-Off Contract is annually in advance
<b>Invoice details</b>	<p>The Supplier will issue electronic invoices <b>annually in advance</b>.</p> <p>The Buyer will pay the Supplier within <b>30</b> days of receipt of a valid invoice.</p>
<b>Who and where to send invoices to</b>	<p>Invoices will be sent to CMA Account Payable Team:</p> <ul style="list-style-type: none"> <li>• Invoices</li> <li>• <a href="mailto:invoices@cma.gov.uk">invoices@cma.gov.uk</a></li> </ul>
<b>Invoice information required</b>	<p>All invoices must include:</p> <ul style="list-style-type: none"> <li>• Service Details</li> <li>• Service Period being charged</li> <li>• CMA vailed Purchase Order Number</li> </ul>
<b>Invoice frequency</b>	Invoice will be sent to the Buyer Annually.
<b>Call-Off Contract value</b>	The total value of this Call-Off Contract is <b>£299,960</b> (£359,952 including VAT).



<b>Call-Off Contract charges</b>	<p>The breakdown of the Charges is below and based on license for 2,500 IPs per annum:</p> <ul style="list-style-type: none"> <li>• [REDACTED]</li> </ul> <p>2 years contract cost totals £299,960</p>
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### Additional Buyer terms

<b>Performance of the Service and Deliverables</b>	This Call-Off Contract will include the following Implementation Plan, exit and offboarding plans and as described in this order and Darktrace EULA
<b>Guarantee</b>	Non Applicable
<b>Warranties, representations</b>	Non Applicable
<b>Supplemental requirements in addition to the Call-Off terms</b>	Non Applicable
<b>Alternative clauses</b>	Non Applicable
<b>Buyer specific amendments to/refinements of the Call-Off Contract terms</b>	Non Applicable
<b>Public Services Network (PSN)</b>	Non Applicable

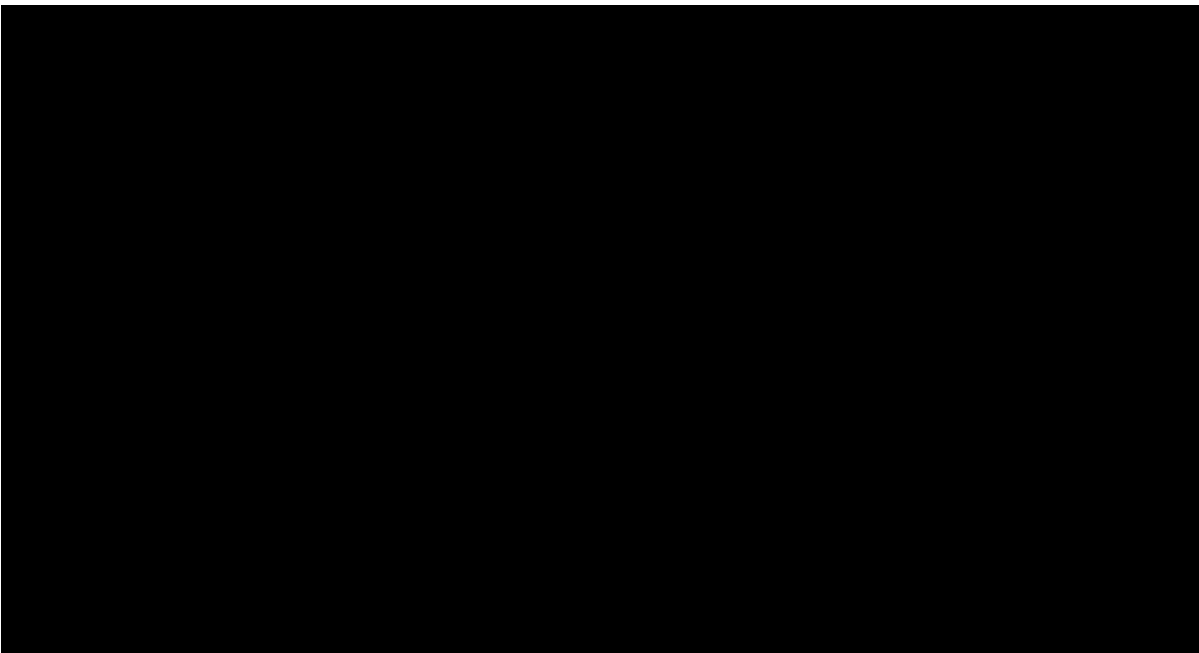
<b>Personal Data and Data Subjects</b>	Confirm whether Annex 1 (and Annex 2, if applicable) of Schedule 7 is being used: <b>[Delete as appropriate]</b> Annex 1, Annex 2
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## 1. Formation of contract

- 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.



## Schedule 1: Services

To be added in agreement between the Buyer and Supplier and will be G-Cloud Services the Supplier is capable of providing through the Digital Marketplace.

Product/Service	QTY	Term (months)
Enterprise Immune System (IPs)	2500	24
DCIP-X2 Appliance	1	24
Comprising:		
<i>Cloud V-Sensor</i>	25	24
<i>Cloud O-Sensor</i>	150	24

Plus, the following account services:

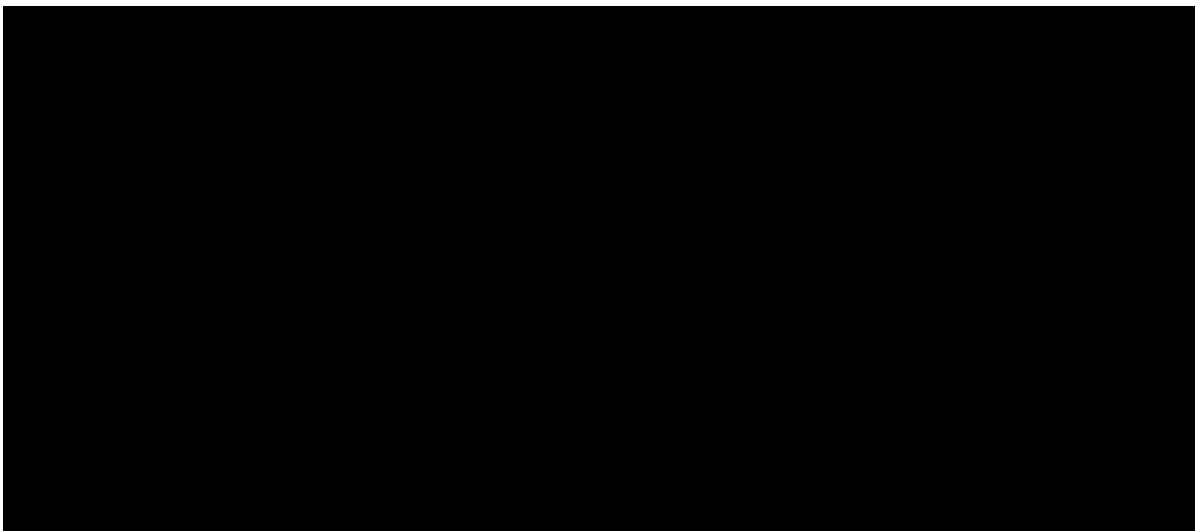
- Installation Services
- Standard Support Services
- eLearning Training
- Public Online Training
- Private Training (Remote) (x2)

## 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:

**Based on a license for 2,500 IPs and is approved for a timeline of formalization by End of March.**

### **Darktrace for Network (Detection Only)**



## 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

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

### 10.2 Consequences of termination

- 10.2.1 Subject to any other right or remedy of the parties, the Collaboration Suppliers and the Buyer will continue to comply with their respective obligations under the

[contracts] [Call-Off Contracts] following the termination (however arising) of this Agreement.

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

## 11. General provisions

### 11.1 Force majeure

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

### 11.2 Assignment and subcontracting

- 11.2.1 Subject to clause 11.2.2, the Collaboration Suppliers will not assign, transfer, novate, sub-license or declare a trust in respect of its rights under all or a part of this Agreement or the benefit or advantage without the prior written consent of the Buyer.
- 11.2.2 Any subcontractors identified in the Detailed Collaboration Plan can perform those elements identified in the Detailed Collaboration Plan to be performed by the Subcontractors.

### 11.3 Notices

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

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

### 11.4 Entire agreement

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

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

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

### 11.5 Rights of third parties

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

### 11.6 Severability

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

### 11.7 Variations

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

### 11.8 No waiver

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

### 11.9 Governing law and jurisdiction

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

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

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

Signed by:

Full name (capitals):

Position:

Date:

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

Signed by:

Full name (capitals):

Position:

Date:

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

Signed by:

Full name (capitals):

Position:

Date:

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

Signed by:

Full name (capitals):

Position:

Date:



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

Signed by:

Full name (capitals):

Position:

Date:

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

Signed by:

Full name (capitals):

Position:

Date:

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

Signed by:

Full name (capitals):

Position:

Date:

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

<b>Collaboration supplier</b>	<b>Name/reference of contract</b>	<b>Effective date of contract</b>

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

## Schedule 4: Alternative clauses

### 1. Introduction

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

### 2. Clauses selected

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

2.1.1 Scots Law and Jurisdiction

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

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

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

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

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

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

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

### 2.3 Discrimination

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

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

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

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

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

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

## 2.4 Equality policies and practices

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

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

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

- b. the appointment or designation of a senior manager with responsibility for equal opportunities
- c. training of all staff and other relevant persons in equal opportunities and harassment matters
- d. the inclusion of the topic of equality as an agenda item at team, management and staff meetings

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

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

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

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

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

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

## 2.5 Equality

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

2.5.2 The Supplier acknowledges that the Customer must, in carrying out its functions, have due regard to the need to promote equality of opportunity as contemplated by the Northern Ireland Act 1998 and the Supplier will use all reasonable endeavours

to assist (and to ensure that relevant Subcontractor helps) the Customer in relation to same.

## 2.6 Health and safety

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

## 2.7 Criminal damage

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

Order. Any appeal against a refusal to meet any claim or against the amount of the award will be at the Customer's cost and the Supplier will (at no additional cost to the Customer) provide any help the Customer reasonably requires with the appeal.

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

## Schedule 5: Guarantee

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

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

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

and

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

### Whereas:

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

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

Suggested headings are as follows:

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



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

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

### Definitions and interpretation

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

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

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

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

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

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

Unless the context otherwise requires:

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

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

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

## Guarantee and indemnity

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

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

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

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

## Obligation to enter into a new contract

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

## Demands and notices

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

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

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

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

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

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

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

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

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

#### Beneficiary's protections

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

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

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

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

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

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

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

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

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

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

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

## Representations and warranties

The Guarantor hereby represents and warrants to the Buyer that:

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

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

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

## Payments and set-off

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

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

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

## Guarantor's acknowledgement

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

## Assignment

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

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

## Severance

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

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

### Third-party rights

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

### Governing law

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

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

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

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

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

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

EXECUTED as a DEED by

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

Director

Director/Secretary



## Schedule 6: Glossary and interpretations

In this Call-Off Contract the following expressions mean:

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

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

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

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

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

<b>Implementation Plan</b>	The plan with an outline of processes (including data standards for migration), costs (for example) of implementing the services which may be required as part of Onboarding.
<b>Indicative test</b>	ESI tool completed by contractors on their own behalf at the request of CCS or the Buyer (as applicable) under clause 4.6.
<b>Information</b>	Has the meaning given under section 84 of the Freedom of Information Act 2000.
<b>Information security management system</b>	The information security management system and process developed by the Supplier in accordance with clause 16.1.
<b>Inside IR35</b>	Contractual engagements which would be determined to be within the scope of the IR35 Intermediaries legislation if assessed using the ESI tool.
<b>Insolvency event</b>	<p>Can be:</p> <ul style="list-style-type: none"> <li>• a voluntary arrangement</li> <li>• a winding-up petition</li> <li>• the appointment of a receiver or administrator</li> <li>• an unresolved statutory demand</li> <li>• a Schedule A1 moratorium</li> </ul>
<b>Intellectual Property Rights or IPR</b>	<p>Intellectual Property Rights are:</p> <ul style="list-style-type: none"> <li>• copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, 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

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

Descriptions	Details
Identity of Controller for each Category of Personal Data	<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> <p><b>As described in DARKTRACE MASTER CUSTOMER AGREEMENT, Appendix 2: Data Processing Agreement</b></p>
Duration of the Processing	As described in DARKTRACE MASTER CUSTOMER AGREEMENT, Appendix 2: Data Processing Agreement, which will be the length of the licencing agreement.
Nature and purposes of the Processing	<p><b>[Please be as specific as possible, but make sure that you cover all intended purposes.]</b></p> <p>The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise</p>

	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>As described in DARKTRACE MASTER CUSTOMER AGREEMENT, Appendix 2: Data Processing Agreement</b>
Categories of Data Subject	<b>As described in DARKTRACE MASTER CUSTOMER AGREEMENT, Appendix 2: Data Processing Agreement</b>
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	Since the Darktrace Appliance is on CMA's own site, data is processed on site and never leaves said infrastructure. In the even of a contract coming to an end, the appliance is wiped of all data and returned to Darktrace (more information is found on the Darktrace customer Portal)

## Annex A: Darktrace Master Customer Agreement (EULA)

### IMPORTANT - READ CAREFULLY:

Please read the following legally binding Darktrace Master Customer Agreement ("Agreement") between Darktrace Holdings Limited ("Darktrace") and the person or entity that has been granted rights under this Agreement ("Customer") carefully. THIS AGREEMENT WILL APPLY TO ANY QUOTE, PRODUCT ORDER FORM, ORDER ACKNOWLEDGEMENT, AND INVOICE, AND ANY SALE, LICENCE, OR DELIVERY OF ANY APPLIANCES OR SERVICES BY DARKTRACE. By selecting the 'accept' option, installing or otherwise accessing or using the Offering (as defined herein), Customer acknowledges that Customer has read, understands and agrees to be bound by the terms and conditions of this Agreement. Where a reseller, service provider, consultant, contractor or other permitted third party downloads, installs or otherwise uses the Appliance on Customer's behalf, such party will be deemed to be Customer's agent and Customer will be deemed to have accepted all of the terms and conditions of this Agreement as if Customer had directly downloaded, installed or used the Appliance.

If Customer does not agree with the terms and conditions of this Agreement, Customer is not authorised to install the Appliance or otherwise use the Offering for any purpose whatsoever. If Customer returns the unused Appliance and all accompanying items in their original condition and packaging within twenty-one (21) calendar days of delivery by Darktrace, together with proof of purchase, Customer may receive a full refund of any Fees paid.

Darktrace and Customer may be collectively referred to as the "Parties" or individually as a "Party".

### RECITALS

Whereas, Darktrace is the supplier of the Offering that is more fully described in the applicable quotation, ordering document, or commercial terms schedule provided by Darktrace or its authorised reseller, as applicable, and accepted by Darktrace, which identifies the Appliances and any Services ordered by Customer from Darktrace or its authorised reseller, as applicable, the term, the respective quantities, the applicable fees, together with any other specifications or requirements and any other restrictions (if any) ("Product Order Form").

Whereas, Customer is interested in using the Offering for its internal use and Darktrace has agreed to Customer's use of the Offering on the terms of this Agreement.

Now therefore, in consideration of the mutual covenants and the payment of Fees described herein, the Parties agree as follows:

#### 1. DEFINITIONS

Certain capitalised terms used but not defined herein are as set forth in Appendix 1 to this Agreement.

#### 2. EVALUATIONS AND BETA TESTING

The following terms in this Clause 2 apply to a Darktrace proof of value or technical preview of the Offering.

- 2.1. If Darktrace permits Customer to conduct a proof of value of any commercially-available Offering (the "Evaluation"), Customer shall be granted a non-exclusive, non-transferable, non-sublicensable licence to use the Offering free of charge for evaluation purposes only for a maximum of four (4) weeks, or such other duration as specified by Darktrace in writing at its sole discretion (the "Evaluation Period"). Except for the foregoing, Darktrace does not grant

Customer any rights, implied or otherwise in or to the Offering in respect of an Evaluation. Customer must keep the Appliance free from liens, will be responsible for any damage to such Appliance during the Evaluation Period (reasonable wear and tear excepted) and will carry insurance coverage (all risks) in an amount equal to the full replacement value of the Appliance. On the expiry of the Evaluation Period, and unless the Parties agree to a subsequent purchase of the Offering, Customer shall return the Appliance to Darktrace securely and properly packaged, with carriage (and insurance at Customer's option) and this Agreement will terminate.

- 2.2. If Darktrace provides Customer with a new product or new version of the Offering for technical preview or beta testing purposes (a "Preview Product"), Customer may use the Preview Product for evaluation purposes, in a non-production test environment only, for the period specified by Darktrace (the "Test Period"). Customer will test the Preview Product in accordance with any conditions specified in the readme file for the software or any accompanying Documentation and will gather and report test data, feedback, comments and suggestions to Darktrace. Customer's right to use the Preview Product will terminate upon expiry of the Test Period. Darktrace does not warrant that it will release a commercial version of the Preview Product, or that a commercial version will contain the same or similar features as the Preview Product.

- 2.3. Clause 9 and Clause 12 will not apply to Evaluations or Preview Products. APPLIANCES PROVIDED FOR THE PURPOSES OF EVALUATION ("EVALUATION PRODUCTS") AND PREVIEW PRODUCTS ARE PROVIDED "AS IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (i) DARKTRACE MAKES NO WARRANTIES, CONDITIONS, REPRESENTATIONS OR UNDERTAKINGS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RELATION TO SUCH EVALUATION PRODUCTS OR PREVIEW PRODUCTS; AND (ii) IN NO EVENT SHALL DARKTRACE BE LIABLE TO CUSTOMER OR TO THOSE CLAIMING THROUGH CUSTOMER FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGE OR LOSS OF ANY KIND, OR ANY LOSS OF PROFITS, LOSS OF CONTRACTS, BUSINESS INTERRUPTIONS, LOSS OF OR CORRUPTION OF INFORMATION OR DATA HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT OR TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), EVEN IF DARKTRACE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 2.4. IF ANY LIMITATION, EXCLUSION, DISCLAIMER OR OTHER PROVISION CONTAINED IN CLAUSE 2.3 ABOVE IS HELD TO BE INVALID FOR ANY REASON BY A COURT OF COMPETENT JURISDICTION AND DARKTRACE BECOMES LIABLE THEREBY FOR LOSS OR DAMAGE THAT MAY LAWFULLY BE LIMITED, SUCH LIABILITY WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED TEN THOUSAND POUNDS STERLING (£10,000).

### 3. OFFERING; ORDER PROCESS

- 3.1. Darktrace agrees to provide to Customer: (i) the number and type of Appliances; (ii) the Support Services; and (iii) the training to be provided to Customer, if any, each as set out in the Product Order Form. The Product Order Form must be in writing and reference this Agreement to be valid. The Product Order Form will be governed by this Agreement and any different or additional terms presented with or in any communication, including but not limited to, Customer's purchase order, are deemed null and void and of no effect unless the additional

terms are agreed upon by the Parties in writing prior to acceptance of that Product Order Form.

#### 4. HARDWARE

- 4.1. Hardware Products. Unless otherwise agreed in the Product Order Form, use of the Hardware is included in the Fees. The Hardware is provided solely as the medium for delivery and operation of the Software and must not be used for any other purpose. Customer will be granted a licence to the Software on the terms of Clause 5 below.
- 4.2. Delivery. Darktrace will use commercially reasonable efforts to ship the Appliance(s) on the agreed delivery dates (in partial or full shipments); provided, however, that Darktrace will in no event be liable for any delay in delivery or for failure to give notice of delay. Darktrace may withhold or delay shipment of any order if Customer is late in payment or is otherwise in default under this Agreement. Darktrace will deliver the Appliance FCA (Incoterms 2010) to the agreed Sites. In the absence of specific shipping instructions from Customer, Darktrace will ship by the method of its choice. Unless otherwise agreed, Customer will pay and be exclusively liable for all costs associated with shipping and delivery including without limitation, freight, shipping, customs charges and expenses, cost of special packaging or handling and insurance premiums incurred by Darktrace in connection with the shipment of the Appliance(s) to Customer. Darktrace will identify itself in all documents related to the shipment of the Appliance(s) as the exporter of record from the applicable jurisdiction of export, and Customer (or its agent, as applicable) as the importer of record into the country of delivery.
- 4.3. Title to Hardware. Title to the Hardware will remain with Darktrace for the entire Term. Upon termination for any reason, or on expiration of the Term, Customer shall return the Hardware to Darktrace, securely and properly packaged, with carriage (and insurance at Customer's option) prepaid. Whilst the Hardware is in Customer's possession, Customer must (a) clearly designate the Hardware as Darktrace's property; (b) hold the Hardware on a fiduciary basis as Darktrace's bailee; (c) store and use the Hardware in a proper manner in conditions which adequately protect and preserve the Hardware; (d) insure the Hardware against all risks to its full replacement value; and (e) not sell, charge, pledge, mortgage or otherwise dispose of the Hardware or any part of it or permit any lien to arise over the Hardware (or part thereof) and keep the Hardware free from distress, execution and other legal process.

#### 5. LICENCE GRANT FOR THE SOFTWARE AND RESTRICTIONS

- 5.1. Licence Grant for Software. In consideration of the Fees paid by Customer to Darktrace, and subject to the terms and conditions of this Agreement and the Product Order Form, Darktrace grants to Customer a non-exclusive, non-transferable, non-sublicensable licence for the Term to: (i) install and use the Appliance on the Site(s) or an Outsource Provider's site(s) for Customer's or its Affiliate's internal business purposes (provided that neither Customer nor its Affiliates may use the Appliance or the Services as a commercial product or for the benefit of an unaffiliated third party); (ii) make a commercially reasonable number of copies of the Documentation; provided however, that Customer must reproduce and include all of Darktrace's and its suppliers' copyright notices and proprietary legends on each such copy.
- 5.2. Licence Restrictions. All Software is licensed, not sold. The restrictions in this Agreement represent conditions of Customer's licence. Unless otherwise specified in the Product Order Form or the Documentation, the Software is pre-installed on the Hardware and Customer agrees to use the Software solely in conjunction with such Hardware and not separately or apart from the Hardware. Customer specifically agrees not to: (i) sub-licence, rent, sell, lease, distribute or otherwise transfer the Software or any part thereof or use the Offering, or allow the Offering to be used, for timesharing or service bureau purposes or otherwise use or allow others to use



for the benefit of any third party (other than Customer's Affiliates); (ii) attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code or underlying ideas or algorithms of the Software or Third Party Software (other than the GPL Software) or any portion thereof, except as required to be permitted by applicable law; (iii) modify, port, translate, localise or create derivative works of the Software, the Third Party Software, the Documentation; (iv) use the Offering: (a) in violation of any law, statute, ordinance or regulation applicable to Customer (including but not limited to the laws and regulations governing publicity or privacy, export/import control, federal, state and local laws and regulations governing the use of network scanners and related software in all jurisdictions in which systems are scanned or scanning is controlled, or anti-discrimination, in each case that are applicable to Customer); or (b) negligently, intentionally or wilfully propagate any virus, worms, Trojan horses or other programming routine intended to damage any system or data; (v) remove or modify any acknowledgements, credits or legal notices contained on the Appliance or any part thereof; (vi) install or run on the Hardware on any software applications other than the Software and Third Party Software installed by Darktrace on such Hardware; (vii) collect any information from or through the Offering using any automated means (other than Darktrace approved APIs), including without limitation any script, spider, "screen scraping," or "database scraping" application or gain or attempt to gain non-permitted access by any means to any Darktrace computer system, network, or database; and (viii) file copyright or patent applications that include the Offering or any portion thereof.

- 5.3. Affiliate Use. Darktrace acknowledges and agrees that the Offering may be used for the benefit of Customer Affiliates incorporated on or before the Effective Date of the Product Order Form. Such Customer Affiliates will be entitled to utilise the Offering in the same way as Customer under the terms of this Agreement. To the extent that any such Customer Affiliate utilises the Offering in accordance with this Clause 5.3 Customer (acting as agent and trustee of the relevant Customer Affiliate) will be entitled to enforce any term of this Agreement and recover all losses suffered by such Customer Affiliate pursuant to this Agreement as though Customer had suffered such loss itself, provided that in no event may Customer make multiple recoveries in respect of the same loss.
- 5.4. Outsource Provider. In the event that Customer contracts with any third party service provider(s) such as an outsourcer, hosting, managed service, or collocation service provider or other information technology service provider for the performance of information technology functions (each, an "Outsource Provider"), Customer may permit such Outsource Provider to exercise all or any portion of the rights granted in Clause 5.1 above solely on Customer's or its Affiliates' behalf, provided that, (i) the Outsource Provider will only use or operate the Offering for Customer's use subject to terms and conditions that are consistent with the rights and limitations set out in this Agreement; and (ii) Customer will remain liable for the acts and omissions of the Outsource Provider under this Agreement.
- 5.5. Third Party Software/ Open Source Software. Customer acknowledges that the Software may contain or be accompanied by certain third-party hardware and software products or components ("Third Party Products") including Open Source Software. Any Open Source Software provided to Customer as part of the Offering is copyrighted and is licensed to Customer under the GPL/LGPL and other Open Source Software licences. Copies of, or references to, those licences may be set out in a Product Order Form, the Third Party Product packaging or in a text file, installation file or folder accompanying the Software. If delivery of Open Source Software source code is required by the applicable licence, Customer may obtain the complete corresponding Open Source Software source code for a period of three years after Darktrace's last shipment of the Software by sending a request to: Attn: Legal Department -

Open Source Software Request, Darktrace Holdings Limited, Maurice Wilkes Building, Cowley Road, Cambridge CB4 0DS, United Kingdom.

## 6. SERVICES

- 6.1. Installation. Darktrace will conduct its standard installation and test procedures to confirm completion of the installation of the Appliance on Customer's or its Outsource Provider's site ("Installation Services").
- 6.2. Support Services. Darktrace will provide the Standard Support Services for the Term and any Support Service Options specified in the Product Order Form (collectively, the "Support Services"). Darktrace's Support Services are further described in the Support Services Data Sheet, which details Darktrace's Standard Support Services and Support Service Options, and their respective eligibility requirements, service limitations and Customer responsibilities.
- 6.3. Call Home. Darktrace's Call Home feature is critical for certain Support Services. Darktrace will limit its access solely to the extent relevant to Darktrace's provision of the Support Services, and such remote access will be subject to Customer's reasonable policies and procedures provided to Darktrace in writing in advance. The Call Home connection remains within Customer's complete control and is initiated by the onsite Appliance. It can be initiated and terminated at any time by Customer.
- 6.4. DISCLAIMER. UNLESS EXPRESSLY AGREED, THE SERVICES DO NOT INCLUDE THE MONITORING, INTERPRETATION OR CORRECTIVE ACTION WITH RESPECT TO ANY ALERTS GENERATED BY THE OFFERING. NO ADVICE, REPORT, OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM DARKTRACE OR THROUGH OR FROM THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. CUSTOMER UNDERSTANDS THAT: (A) ANY OUTCOME OF THE SERVICES INVOLVING SECURITY ASSESSMENT IS LIMITED TO A POINT-IN-TIME EXAMINATION OF CUSTOMER'S SECURITY STATUS; AND (B) THE SERVICES DO NOT CONSTITUTE ANY FORM OF REPRESENTATION, WARRANTY OR GUARANTEE THAT CUSTOMER'S SYSTEMS ARE SECURE FROM EVERY FORM OF ATTACK, EVEN IF FULLY IMPLEMENTED. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT NOT ALL ANOMALIES / INTRUSIONS MAY BE REPORTED OR PREVENTED.

## 7. FEES, PAYMENT AND TAXES

- 7.1. Fees. Fees are stated in the Product Order Form. No refunds will be made except as provided in Clause 9 and Clause 10.3 of this Agreement. Unless otherwise explicitly agreed in writing, fees are: (i) exclusive of sales and use taxes assessed by any taxing authority in the jurisdiction(s) in which Customer is physically located and takes delivery of the Appliance or Services; and (ii) exclusive of duties and shipping and handling fees, which unless otherwise agreed will be the responsibility of Customer. Should Customer be required under any law or regulation of any governmental entity or authority outside of the United Kingdom to withhold or deduct any portion of the payments due to Darktrace, then Customer will increase the sum payable to Darktrace by the amount necessary to yield to Darktrace an amount equal to the sum Darktrace would have received had no withholdings or deductions been made..
- 7.2. Invoices and Payment. Unless otherwise stated in the Product Order Form, Customer will be invoiced the Fees from the commencement date specified in the Product Order Form (the "Commencement Date"). Any other charges, such as out of pocket expenses will be invoiced monthly in arrears. Invoicing will occur via email. Unless otherwise agreed in the Product Order Form, Customer agrees to pay all undisputed amounts within thirty (30) days of

Customer's receipt of the applicable invoice by direct bank or wire transfer in accordance with the instructions on the invoice, and any bank charges assessed on Customer by Customer's bank. UNLESS PAYMENTS ARE MADE BY BANK OR WIRE TRANSFER, THEY MUST BE MADE

ANNUALLY IN ADVANCE. Darktrace may suspend or cancel performance of open orders or Services if Customer fails to make payments when due, reserving all other rights and remedies as may be provided by law. Darktrace may impose late charges on overdue payments at a rate equal to two percent (2%) per annum above the official dealing rate of the Bank of England, calculated from the date payment was due until the date payment is made, and all reasonable expenses incurred in collection, including legal fees.

- 7.3. Lapsed Fees. If Customer has lapsed in the payment of Fees due hereunder, Darktrace may suspend the provision of Services and prior to recommencement of the Services by Darktrace, Customer will be responsible for paying all fees associated with the Offering from the date such Services were stopped through to the then-current date.
- 7.4. Clause 7 shall not apply where Customer has purchased the Offering through a Darktrace authorised reseller.

## 8. INTELLECTUAL PROPERTY; OWNERSHIP

- 8.1. Intellectual Property. Except as expressly set forth herein: (i) this Agreement does not grant either Party any rights, implied or otherwise, to the other's Intellectual Property; and (ii) Darktrace, its suppliers and licensors, retain all right, title and interest in and to the Offering, and the Documentation and all copies thereof, including all enhancements, error correction, new releases, updates, derivations, and modifications thereto (collectively, "Darktrace Intellectual Property"). Customer agrees to inform Darktrace promptly of any infringement or other improper action with respect to Darktrace Intellectual Property that comes to Customer's attention.

## 9. WARRANTIES

- 9.1. Hardware Warranty. Darktrace warrants to Customer that during the two (2) year period from the date of delivery of the Appliance, the Hardware will perform materially in accordance with the applicable Datasheet.
- 9.2. Software Warranty. Darktrace warrants to Customer that during a period of ninety (90) days from the date of delivery of the Appliance, the Software will perform materially in accordance with the applicable Datasheet.
- 9.3. Services Warranty. Darktrace warrants to Customer that all Services will be performed with all reasonable care, skill and diligence in accordance with generally recognised commercial practices and standards.
- 9.4. Exceptions. The warranties contained in Clause 9.1 and Clause 9.2 above will not apply if: (i) Customer's use of the Offering is not in accordance with this Agreement; (ii) Customer fails to follow Darktrace's environmental, installation, operation or maintenance instructions or procedures in the Documentation; (iii) the Appliance has been subject to Customer's (or its agent's) abuse, negligence, improper storage, servicing or operation (including without limitation use with incompatible equipment), reasonable wear and tear excepted; (iv) the Appliance has been modified, repaired or improperly installed other than by Darktrace or any contractor or subcontractor of Darktrace; (v) Customer (or its agent) has failed to implement, or to allow Darktrace or its agents to implement, any corrections or modifications to the Appliance made available to Customer by Darktrace; or (vi) Customer (or its agent) has combined the Appliance with other software, services, or products that are not provided by Darktrace or not

otherwise specified in the Documentation, and, but for such combination, the breach of warranty would have been avoided.

9.5 Remedies. If during the applicable warranty period contained in Clause 9.1 or Clause 9.2 above: (i) Darktrace is notified promptly in writing upon discovery of an error in any of the Appliance, including a detailed description of such alleged error; and (ii) Darktrace's inspections and tests determine that the Appliance contains an error and it is not subject to any of the exceptions set out in Clause 9.4, then, as Darktrace's entire liability and Customer's sole remedy for such breach of warranty, Darktrace will (at Darktrace's option and sole expense) correct, repair or replace the Appliance within a reasonable time or provide or authorise a refund of the unused portion of the Fees Customer has paid for the Offering following the return of the Appliance to Darktrace and the Agreement will terminate. Any items provided as replacement under the terms of the applicable warranty will be warranted for the remainder of such original warranty period. Darktrace will pay for, and will bear all risk of loss of or damage to, the return shipment of the Appliance to Darktrace and the shipment of repaired or replaced the Appliance to Customer. Customer agrees to provide prompt notice of any failure under Clause 9.3 and Darktrace will re-perform any Service that fails to meet the warranted standard.

9.6 DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES SET OUT IN THIS AGREEMENT, AND TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER DARKTRACE NOR ANY OF ITS THIRD PARTY LICENSORS OR SUPPLIERS MAKE ANY WARRANTIES, CONDITIONS, UNDERTAKINGS OR REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE IN RELATION TO ANY SUBJECT MATTER OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.. DARKTRACE DOES NOT WARRANT THAT THE OPERATION OF THE OFFERING WILL BE ERROR-FREE OR UNINTERRUPTED.

## 10. INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT INDEMNITY

10.1. Darktrace Indemnity. Darktrace will indemnify Customer, Customer's Affiliates, and their respective officers, directors, and employees (and any successors and assigns of the foregoing) (collectively, the "Customer Indemnitees") against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim that the Software provided or made available by Darktrace under this Agreement, or its receipt, possession or use by any Customer Indemnitee, infringes a European or U.S. patent, any copyright, or misappropriates any third party trade secrets.

The indemnification obligations of Darktrace will be subject to Customer: (i) notifying Darktrace in writing within twenty (20) days of receiving notice of any threat or claim of such action; (ii) giving Darktrace exclusive control and authority over the defence or settlement of such action (provided that: (A) any settlement will not entail an admission of fault or guilt by any Customer Indemnitee; and (B) the settlement includes, as an unconditional term, the claimant's or the plaintiff's release of Customer Indemnitees from all liability in respect of the claim); (iii) not entering into any settlement or compromise of any such action without Darktrace's prior written consent; and (iv) providing reasonable assistance requested by

Darktrace at Darktrace's expense. Customer will be obliged to mitigate its losses insofar as is reasonable in the circumstances.

10.2. Exclusions. The obligations set out in Clause 10.1 do not apply to the extent that a third party claim is caused by, or results from: (a) Customer's combination or use of the Software that is the subject of the claim with other software, services, or products that are not provided or authorised by Darktrace in writing, if the claim would have been avoided by the noncombined or independent use of the Software that is the subject of the claim; (b) modification of the Software that is the subject of the claim by anyone other than Darktrace or any contractor or subcontractor of Darktrace, if the third party claim would have been avoided by use of the unmodified Offering or other intellectual property that is the subject of the claim; (c) Customer's continued allegedly infringing activity after being notified thereof and being provided with modifications that would have avoided the alleged infringement (which in implementing such modifications, Darktrace will use commercially reasonable efforts to have substantially preserve the utility and functionality of the Offering or other intellectual property that is the subject of the claim); (d) Customer's use of the Software that is the subject of the claim in a manner not in accordance with this Agreement or the Documentation; (e) use of other than Darktrace's most current release of the Software that is the subject of the claim if the third party claim would have been avoided by use of the most current release or revision release or revision.

10.3. Remedies. If Darktrace reasonably believes the Software infringes a third party's Intellectual Property Rights, then

Darktrace will, at its option and at no additional cost to Customer: (a) procure for Customer the right to continue to use the Software; (b) replace the Software; or (c) modify the Software to avoid the alleged infringement. If none of the options in the previous sentence are commercially reasonable, Darktrace may terminate the licence for the allegedly infringing Software and refund a pro rata refund of the Fees paid by Customer from the date a third party claim arose for the allegedly infringing Software to the then-current date, whereupon this Agreement will automatically terminate.

10.4. THIS CLAUSE 10 IS A COMPLETE STATEMENT OF THE CUSTOMER'S REMEDIES FOR THIRD PARTY CLAIMS FOR INFRINGEMENT AS DESCRIBED IN CLAUSE 10.1.

## 11. CUSTOMER DATA; CUSTOMER UNDERTAKINGS AND INDEMNITY

11.1. Customer Data; Licence Grant. Customer will own all right, title and interest in and to the Customer Data and to the extent such Customer Data is included in a Report, the actual content of such Report. For any Customer Data stored on the Appliance, to the extent required to provide the Services, Customer grants to Darktrace a limited, and non-exclusive licence to access and use the Customer Data only to the extent necessary for Darktrace to perform the Services. Customer agrees Darktrace may utilise the details of any Alerts occurring in Customer's network and any connected data source to develop the Offering on an anonymised basis and excluding any Customer Confidential Information.

11.2. Customer Security Obligations. In using the Offering or authorising its Outsource Provider and third parties to use it on Customer's behalf, Customer (and not Darktrace) will be responsible for establishing, monitoring, and implementing security practices to control the physical access to and use of the Offering and all Customer Data therein, including Personal Data.

11.3. DATA DISCLAIMER; INDEMNITY. CUSTOMER IS SOLELY RESPONSIBLE FOR ITS USE OF THE OFFERING, THE ACTIVITIES OF ITS USERS AND FOR THE ACCURACY, INTEGRITY, LEGALITY, RELIABILITY AND APPROPRIATENESS OF ALL CUSTOMER DATA.

CUSTOMER EXPRESSLY RECOGNISES THAT DARKTRACE DOES NOT CREATE OR ENDORSE ANY CUSTOMER DATA PROCESSED BY OR USED IN CONJUNCTION WITH THE OFFERING. CUSTOMER FURTHER ACKNOWLEDGES THAT DARKTRACE AND ITS AFFILIATES DO NOT PROVIDE BACKUP SERVICES FOR CUSTOMER DATA AND CUSTOMER UNDERTAKES THAT IT SHALL BE SOLELY RESPONSIBLE FOR BACKUP OF ALL CUSTOMER DATA. Customer will, at Customer's own expense, indemnify, defend and hold Darktrace, its Affiliates, and their respective officers, directors, and employees, ("Darktrace Indemnitees") harmless from and against all liabilities, damages, and costs, including settlement costs and reasonable attorneys' fees, incurred by reason of Darktrace's compliance with the instructions of Customer with respect to the ownership, custody, processing or disposition of the Customer Data by Darktrace, as applicable.

## 12. LIMITATION OF LIABILITY

12.1. LIMITATION OF LIABILITY. SUBJECT TO THE REMAINDER OF THIS CLAUSE 12, EACH PARTY'S MAXIMUM LIABILITY TO THE OTHER PARTY FOR ANY AND ALL CLAIMS, LOSS OR DAMAGE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE TO DARKTRACE FOR THE OFFERING DURING THE THEN-APPLICABLE TERM, EXCEPT THAT IN RESPECT OF (I) CLAUSE 11.3 ("DATA DISCLAIMER; INDEMNITY") AND (II) CLAUSE 15 ("DATA PROTECTION") EACH PARTY'S LIABILITY TO THE OTHER FOR ALL SUCH BREACHES SHALL NOT EXCEED, IN THE AGGREGATE, THE GREATER OF (A) THREE TIMES (3X) TOTAL FEES PAID OR PAYABLE TO DARKTRACE FOR THE OFFERING DURING THE THEN-APPLICABLE TERM OR (B) TWO HUNDRED AND FIFTY THOUSAND POUNDS STERLING (£250,000).

12.2. EXCLUSION OF CONSEQUENTIAL DAMAGES. SUBJECT TO CLAUSE 12.3 BELOW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT OR CONSEQUENTIAL LOSS; OR ANY LOSS OF PROFITS; LOSS OF REVENUE OR BUSINESS; LOSS OF GOODWILL OR REPUTATION; LOSS OF OR CORRUPTION OR DAMAGE TO DATA; LOSS OF MANAGEMENT TIME, HOWSOEVER ARISING AND WHETHER OR NOT SUCH PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, CORRUPTION OR DAMAGE.

12.3. Exclusions from Limitation of Liability. Nothing in this Agreement will exclude or limit either Party's liability for: (i) for death or personal injury due to negligence; (ii) fraud; (iii) breach of Clause 14 ("Confidentiality"); (iv) breach of Clause 5 ("Licence Grant for the Software and Restrictions"), or (v) for any other matter in respect of which liability cannot lawfully be limited or excluded.

## 13. TERM; TERMINATION

13.1. Term. This Agreement is effective from the Effective Date and will remain in force until: (i) expiry of the Evaluation Period in accordance with Clause 2.1 above; or (ii) the end of the term specified in a Product Order Form (as applicable the "Term"). In the event of extension or renewal of the Product Order Form, such extension or renewal shall be considered a new and separate Term.

- 13.2. Expiration of the Term. Notwithstanding any provision of this Clause 13, Customer's right to use, and Customer's access to, the Appliance will automatically terminate on expiry of the Term unless and until Customer renews or extends the Term for the Appliance.
- 13.3. Termination for Breach. Either Party may terminate this Agreement if: (i) the other Party is in material breach of the Agreement and fails to cure such breach within thirty (30) days after receipt of written notice; or (ii) the other Party ceases its business operations or becomes subject to insolvency proceedings, which proceedings are not dismissed within thirty (30) days.
- 13.4. Termination or Suspension by Darktrace. Without prejudice to any other right or remedy available to Darktrace:
- 13.4.1. Darktrace may restrict, suspend or terminate Customer's licence or use of the Offering without liability if a court or other government authority issues an order prohibiting Darktrace from furnishing the Offering to Customer. Customer's obligation to pay Fees during any period of suspension under this Clause 13.4.1 will also be suspended. In the event the Offering is suspended pursuant to this Clause 13.4.1 then provided it is lawful to do so, Darktrace will inform Customer of the reasons for the suspension and will work with Customer to resolve such issues and reinstate the Offering.
- 13.4.2. Additionally, Darktrace may terminate, suspend or limit Customer's licence grant or use of the Offering without liability if Darktrace provides Customer with written notice that it has a reasonable suspicion that Customer is using the Offering: (i) in breach of Clause 5.1 or Clause 5.2; or (ii) in a manner that is otherwise unlawful, and in each case Customer does not cure the condition identified in such notice within five (5) business days.
- 13.5. Effect of Termination. Upon termination or expiration of this Agreement:
- 13.5.1. The Term and all other rights and licences granted by one Party to the other, and any Services provided by Darktrace to Customer, will cease immediately;
- 13.5.2. Customer shall ensure all Customer Data is removed from the Appliance and return the Appliance to Darktrace in accordance with Clause 4.3. DARKTRACE WILL NOT BE RESPONSIBLE FOR MAINTAINING OR PROTECTING ANY CONFIGURATION SETTINGS OR DATA FOUND ON THE RETURNED HARDWARE OR COMPONENT PART OF THE HARDWARE AND IT IS CUSTOMER'S SOLE RESPONSIBILITY TO DELETE ANY SUCH INFORMATION PRIOR TO RETURN; and
- 13.5.3. All undisputed Fees owing to Darktrace at the date on which termination takes effect will become due and payable.
- 13.6. Survival. The following provisions will survive any termination of this Agreement: Clause 2 ("Evaluations and Beta Testing"); Clause 5 ("Licence Grant For the Software and Restrictions"); Clause 7 ("Fees, Payments and Taxes"); Clause 8 ("Intellectual Property; Ownership"); Clause 9.6 ("Disclaimer"); Clause 10 ("Intellectual Property Rights Infringement Indemnity"); Clause 11.3 ("Data Disclaimer; Indemnity"); Clause 12 ("Limitation of Liability"); Clause 13.5 ("Effect of Termination"); Clause 13.6 ("Survival"); Clause 14 ("Confidentiality;"); Clause 15 ("Data Protection"); and Clause 16 ("General Provisions").

## 14. CONFIDENTIALITY

- 14.1. Each party will treat the other party's Confidential Information as confidential. Confidential Information of one Party (the "Disclosing Party") may only be used by the other Party (the "Receiving Party") for the purpose of fulfilling obligations or exercising rights under this Agreement, and may only be shared with employees, agents or contractors of the Receiving Party who have a need to know such information to support such purpose ("Representatives"). Each Party will procure that any of its Representatives to whom

Confidential Information is disclosed are bound by contractual obligations equivalent to those in this Clause 14.1. Notwithstanding the foregoing, the Receiving Party shall remain liable for the acts or omissions of its Representatives. Confidential Information will be protected using a reasonable degree of care to prevent unauthorised use or disclosure for five (5) years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: (i) was known or becomes known to the Receiving Party on a non-confidential basis from a third party, provided that: (a) the Receiving Party has no knowledge that the third party is subject to a confidentiality agreement with the Disclosing Party in respect of the information; and (b) such information is not of a type or character that a reasonable person would have regarded it as confidential; (ii) is independently developed by the Receiving Party without violating the Disclosing Party's rights; (iii) is or becomes publicly known other than through disclosure by the Receiving Party or one of its Representatives in breach of this Agreement; or (iv) was lawfully in the possession of the Receiving Party before the information was disclosed by the Disclosing Party. A party may disclose Confidential Information to the extent disclosure is required by law or a governmental agency provided that, to the extent it is lawful to do so, the Receiving Party notifies the Disclosing Party of the request giving it reasonable opportunity to respond, and cooperate with the Disclosing Party's reasonable, lawful efforts to resist, limit or delay disclosure at the Disclosing Party's expense, and except for making such required disclosure, such information will otherwise continue to be Confidential Information. On termination of the Agreement, each Party will promptly return or destroy all Confidential Information of the other Party.

## 15. DATA PROTECTION

15.1. The Parties acknowledge that the Offering may be used to process Personal Data regulated by the Data Privacy Laws and the Parties shall comply with the data processing requirements as set out in Appendix 2.

## 16. GENERAL PROVISIONS

### 16.1. Entire Agreement; Integration.

16.1.1. This Agreement, the appendices and any documents referenced herein, represent the entire agreement between the Parties on the subject matter hereof and supersedes all prior discussions, agreements and understandings of every kind and nature between the Parties and excludes, without limitation, any terms appearing on a purchase order, invoice or other Customer paperwork or any other terms (in each case whether by way of conduct or otherwise). No modification of this Agreement will be effective unless in writing and signed by both Parties. Each Party acknowledges and agrees that, in connection with the Agreement, it has not been induced to enter into the Agreement in reliance upon, and does not have any remedy in respect of, any representation or other promise of any nature other than as expressly set out in this Agreement. Each Party signing this Agreement acknowledges that it has had the opportunity to review this Agreement with legal counsel of its choice and there will be no presumption that ambiguities will be construed or interpreted against the drafter.

16.1.2. Unless otherwise specifically agreed to in a writing signed by each of the Parties, in the event of any conflict or inconsistency between this Agreement, an appendix hereto, any Product Order Form issued hereunder, and or any document incorporated by reference, the order of precedence of the documents from highest to lowest is the



Product Order Form, this Agreement, any appendix hereto and the documents incorporated by reference.

- 16.2. Severability. The illegality or unenforceability of any provision of this Agreement will not affect the validity and enforceability of any legal and enforceable provisions hereof.
- 16.3. Force Majeure. Neither Party will be liable for any failure or delay in performing services or any other obligation under this Agreement, nor for any damages suffered by the other or a Customer by reason of such failure or delay, which is, indirectly or directly, caused by an event beyond such Party's reasonable control, riots, natural catastrophes, terrorist acts, governmental intervention, refusal of licences by any government or other government agency, or other acts of god (each, a "Force Majeure Event"), and such non-performance, hindrance or delay could not have been avoided by the nonperforming Party through commercially reasonable precautions and cannot be overcome by the non-performing Party through commercially reasonable substitute services, alternate sources, workarounds or other means. During the continuation of a Force Majeure Event, the non-performing Party will use commercially reasonable efforts to overcome the Force Majeure Event and, to the extent it is able, continue to perform its obligations under the Agreement.
- 16.4. Notices. Any notice will be delivered by hand or sent by recorded delivery, registered post or registered airmail and satisfactory proof of such delivery must be retained by the sender. All notices will only become effective on actual receipt. Any notices required to be given in writing to Darktrace or any questions concerning this Agreement should be addressed to: Attn: Legal Department, Darktrace Holdings Limited, Maurice Wilkes Building, Cowley Road, Cambridge CB4 0DS, United Kingdom.
- 16.5. Rights of Third Parties. The provisions of this Agreement concerning restrictions on usage of the Offering and protection of Intellectual Property Rights are for the benefit of and may be enforced by each of Darktrace, any Darktrace Affiliate and the Darktrace Indemnitees. Except for the foregoing sentence, or as otherwise expressly set out in the Agreement, this Agreement does not create any rights for any person who is not a party to it and no person who is not a party to this Agreement may enforce any of its terms or rely on any exclusion or limitation contained herein.
- 16.6. Independent Contractors. The Parties are independent contractors. Nothing in this Agreement will be construed to create a partnership, joint venture, or agency relationship between the Parties.
- 16.7. Assignment. This Agreement may not be assigned by either Party without the written consent of the other Party. Notwithstanding the foregoing, consent of the other Party will not be required for a transfer to an Affiliate of a Party or if a Party undertakes an initial public offering, a sale of all or substantially all of its shares or assigns all or substantially all of its business and assets to another entity that is not a direct competitor of the non-assigning Party. Any attempt to assign this Agreement in violation of the foregoing will be null and void. This Agreement binds the Parties, their respective Affiliates, successors and permitted assigns.
- 16.8. Governing Law. Any dispute or claim relating in any way to this Agreement will be governed by the Governing Law, and adjudicated in the Governing Courts, as defined in the table below, and each Party consents to the exclusive jurisdiction and venue thereof; save that (i) each party may enforce its or its Affiliates' intellectual property rights in any court of competent jurisdiction, including but not limited to equitable relief and (ii) Darktrace or its Affiliate may, bring suit for payment in the country where the Customer Affiliate that placed the Product Order Form is located. Where arbitration applies it shall be conducted in English, under the Rules of Arbitration of the International Chamber of Commerce (the "ICC") by three arbitrators in accordance with Art 12 of said Rules. The award shall be final

and binding on the Parties. Except to the extent entry of judgment and any subsequent enforcement may require disclosure, all matters relating to the arbitration, including the award, shall be held in confidence. Customer and Darktrace agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

Customer location (as stated in the Product Order Form)	Governing Law	Governing Courts
United Kingdom	The laws of England & Wales	The courts of England & Wales
United States of America	The laws of the state of California	The state or Federal courts in San Francisco, California
None of the above	The laws of England & Wales	Arbitration at the ICC in London

16.9. Export Restrictions. The Offering is for Customer's use and not for further commercialisation.

Customer acknowledges that the Offering may be classified and controlled as encryption items under the United Kingdom's Export Regulations and other national regulations. Each Party will comply with all applicable laws regarding export-controlled items, and will not export, re-export or import, directly or indirectly, any export-controlled items, or any direct product of them, nor undertake any transaction hereunder in violation of any applicable export laws.

16.10. ITAR. Customer understands that employees of Darktrace and/or its suppliers may have access to native data to perform the Support Services herein and represents that none of this data requires protection from access by foreign persons because it contains technical information regarding defence articles or defence services within the meaning of the United States International Traffic in Arms Regulations (22 CFR § 120) or technical data within the meaning of the United States Export Administration Regulations (15 CFR §§ 730 - 774). If any of this data does contain any such information, Customer will either lock down access to any such data and/or identify any folders containing such data as export-controlled information and acknowledges that special service rates may apply thereto.

16.11. Government End-User Notice (applicable to United States government customers only).

The Offering is commercial within the meaning of the applicable civilian and military Federal acquisition regulations and any supplements thereto. If the user of the Appliance is an agency, department, employee, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Appliance, including technical data or manuals, is governed by the terms, conditions and covenants contained in the Darktrace standard commercial licence agreement, as contained herein.

16.12. Waiver. Each Party agrees that the failure of the other Party at any time to require performance by such Party of any of the provisions herein will not operate as a waiver of the rights of such Party to request strict performance of the same or like provisions, or any other provisions hereof, at a later time.

16.13. Headings. All headings used herein are for convenience of reference only and will not in any way affect the interpretation of this Agreement.

16.14. Equitable Remedies. The Parties agree that with respect to a breach by a Party of Clauses 5, 8 or 14, monetary damages may not be an adequate or sufficient remedy for a breach of this Agreement. Therefore, in addition to any applicable monetary damages, a Party will also be entitled to apply for injunctive relief and other equitable relief to prevent breaches of the Agreement, without proof of actual damage.

## Appendix 1 – Definitions

### 1. DEFINITIONS:

1.1. Defined Terms. Terms defined in this Appendix 1 will have the meanings given below. Defined terms may be used in the singular or plural depending on the context.

“Affiliate” means any corporation or other business entity that directly or indirectly controls, is controlled by or is under common control with a Party. Control means direct or indirect ownership of or other beneficial interest in fifty percent (50%) or more of the voting stock, other vesting interest, or income of a corporation or other business entity;

“Alerts” means features of the Software that generates alerts of suspected malicious activity on a Customer’s network;

“Appliance(s)” means the Software, or Software combined with Hardware, as more fully

described on the Product Order Form “Call Home” means the secure and encrypted channel that connects the Appliance to Darktrace central management;

“Confidential Information” means any information, however conveyed or presented, that relates to the business, affairs, operations, customers, suppliers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, Intellectual Property, and know-how of a Party, and any other information clearly designated by a Party as being confidential to it (whether or not it is marked "confidential"), and information that ought reasonably be considered to be confidential, but in all circumstances excludes any Personal Data.

“Customer Data” means all data and information provided by Customer to, or accessible by, Darktrace under this Agreement in connection with the performance of the Services (which may include information about network traffic on Customer’s network (metrics), log/metadata collection, as well as the raw packet capture data from Customer’s network);

“Datasheet” means the document providing the specification for the Hardware, Software or Services, as applicable and as may be updated by Darktrace from time to time;

“Data Privacy Laws” means the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive)

Regulations 2003, the General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”), the California Consumer Privacy Act of 2018 (“CCPA”), and laws of similar purpose or effect in any relevant jurisdiction, in each case as amended, updated, re-enacted or replaced from time to time;

“Documentation” means user manuals for the Appliance consisting of the applicable installation guides, Datasheets; service descriptions, technical specifications and online help files provided by Darktrace or available on Darktrace’s online portal, as may be updated by Darktrace from time to time;

“Effective Date” means the Effective Date specified in the Product Order Form;

“EU Model Clauses” means the standard contractual clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection under Directive 95/46/EC, pursuant to the European Commission Decision of 5 February 2010;

“Fees” means all applicable fees as set out in the Product Order Form;

“GPL Software” means third party software provided by Darktrace on the Hardware to support use of the Software that is licensed directly to Customer and the relevant Customer Affiliates by the relevant rights holder on the terms of the version included or provided with it



of the GNU General Public Licence, GNU Lesser General Public Licence or other comparable licence.

“Hardware” means any hardware device (including embedded firmware) shipped and installed as part of the Offering;

“Information Security Standards” means Darktrace’s information security code of conduct, as amended from time to time in Darktrace’s sole discretion and available upon request;

“Intellectual Property” means patents, trademarks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights, know-how and other proprietary knowledge and information, internet domain names, rights protecting goodwill and reputation, database rights (including rights of extraction) and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licences and consents in respect of any of the rights and forms of protection mentioned in this definition (and “Intellectual Property Rights” will be construed accordingly);

“Offering” means collectively the Appliance(s), Software, Services and the Documentation;

“Open Source Software” means third party software that Darktrace distributes with the Software pursuant to a licence that requires, as a condition of use, modification or distribution of such software, that the software or other software combined and/or distributed with it be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; (iii) redistributable at no charge; or (iv) redistributable but subject to other limitations;

“Product Order Form” has the meaning set forth in the introductory paragraphs;

“Personal Data” means, generally, information relating to an identified or identifiable natural person, or other regulated data types as defined by applicable Data Privacy Laws;

“Services” means the Darktrace Support Services, and any Installation Services, training or professional services which may be provided by Darktrace as specified in the Product Order Form;

“Support Service Options” means the optional support services, if any, as specified in the Product Order Form and further described in the Support Services Data Sheet;

“Site(s)” means the Customer’s business location or its datacentre at the locations described in a Product Order Form;

“Software” means the Darktrace and the Third Party Software (in object code form) delivered to Customer as part of the Offering or on a standalone basis, together with all enhancements, error corrections, and/or updates which are generally made available by Darktrace as part of the Offering. The GPL Software does not form part of the Software and is licensed to Customer and the Customer Affiliates directly on the terms of the applicable licences, provided that the GPL Software will nevertheless be deemed to form part of the Software for the purposes of the Support Services, such that Darktrace will support it as if it were part of the Software;

“Standard Support Services” means the standard support services provided by Darktrace as set out in the Darktrace Support Services Data Sheet;

“Support Services Data Sheet” means the Documentation describing the terms of the Support Services.

“Third Party Licensors” means the suppliers of the Third Party Software to Darktrace; and

“Third Party Software” means: (i) any software or other technology that is licensed to Darktrace from Third Party Licensors for the purpose of making the Offering available commercially; and (ii) Open Source Software.

1.2. Construction. In this Agreement (except where the context otherwise requires):

- 1.2.1. any reference to a clause or schedule is to the relevant clause or schedule of or to this Agreement and any reference to a paragraph is to the relevant paragraph of the clause or schedule in which it appears;
- 1.2.2. the index and clause headings are included for convenience only and will not affect the interpretation of this Agreement;
- 1.2.3. use of the singular will include the plural and vice versa;
- 1.2.4. use of any gender will include any other gender;
- 1.2.5. any reference to persons includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, foundations and trust (in each case whether or not having separate legal personality);
- 1.2.6. any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those terms;
- 1.2.7. any reference to any other document is a reference to that other document as amended, varied, supplemented, or novated (in each case, other than in breach of the provisions of this Agreement) at any time.

## Appendix 2: Data Processing Agreement

### DEFINITIONS.

For the purposes of this DPA, the terms defined in this Appendix shall have the meanings as set forth in the Agreement. Any terms not specifically defined by this DPA or the Agreement shall have the meaning given by GDPR.

### 2. SUBJECT MATTER OF THE DATA PROCESSING AGREEMENT

2.1 This Data Processing Agreement ("DPA") applies to the processing of Customer Personal Data under the Agreement.

2.2 Customer will be the Data Controller and Darktrace will be the Data Processor as defined under GDPR. Each Party agrees that it shall comply with its obligations as a Data Controller and a Data Processor, respectively under the Data Privacy Laws in exercising its rights and performing its obligations under this Agreement.

2.3 This DPA is an Appendix to the Agreement.

### 3. NATURE AND PURPOSE OF PROCESSING REGULATED DATA

3.1 The Data Processor shall process Personal Data in order to provide the Support Services as set forth in the Support Services Datasheet.

3.2 In the event that the Data Controller has purchased Antigena Email, the additional data protection provisions of the Antigena Email Schedule shall apply and be incorporated into this DPA.

### 4. TYPES AND CATEGORIES OF PRSONAL DATA

#### 4.1 Categories of Data Subjects.

- Employees including volunteers, agents, temporary workers, independent contractors; - Contractors
- Customer clients, prospects
- Suppliers, vendors
- Advisors, consultants and other professional experts
- Customer officers, directors
- And any other categories of Data Subjects that may be contained in the Data Controller's network.

#### 4.2 Types of personal Data

- IP addresses
- Host names
- File names
- Email addresses
- And any other types of Personal Data that may be contained in the Data Controller's network.

### 5. RIGHTS AND OBLIGATIONS OF THE CONTROLLER

5.1 The Data Controller hereby instructs the Data Processor to take such steps in the processing of Personal Data as are reasonably necessary for the performance of the Data Processor's obligations under the Agreement, and agrees that such instructions, comprising the terms of this DPA and the Agreement, constitute its full

and complete instructions as to the means by which Personal Data shall be processed by the Data Processor.

## 6. RIGHTS AND OBLIGATIONS OF THE PROCESSOR

- 6.1 The Data Processor shall only process Personal Data in accordance with the Data Controller's written instruction as specified herein and shall not use Personal Data except to deliver the Offering and the Services as instructed by the Agreement, unless such processing is required by law to which the Data Processor is subject, in which case the Data Processor shall, to the extent permitted by law, inform the Data Controller of that legal requirement prior to carrying out the applicable processing.
- 6.2 The Data Processor shall immediately inform the Data Controller if, in the Data Processor's reasonable opinion, an instruction from the Data Controller infringes the Data Privacy Laws.
- 6.3 The Data Processor shall not transfer Personal Data outside the European Economic Area ("EEA") without the prior written consent of the Data Controller and not without procuring provision of adequate safeguards (as defined by the European Commission from time to time);
- 6.4 In the event that the UK ceases to be a member of the European Union or ceases to be considered by the European Commission to be an adequate country pursuant to Article 45 of GDPR, then the parties agree that Darktrace shall apply the EU Model Clauses as set out at [www.darktrace.com/en/resources/legal-customer-model-clauses.pdf](http://www.darktrace.com/en/resources/legal-customer-model-clauses.pdf) to any relevant transfer of data and such EU Model Clauses shall be deemed incorporated from the date of first transfer.
- 6.5 The Data Processor shall take reasonable steps to ensure the reliability of its agents and employees who have access to any Personal Data.

## 7. SECURITY

- 7.1 Taking into account the nature, scope, context and purposes of processing, the Data Processor has implemented and will maintain the administrative, physical, technical and organisational measures as described in the Darktrace Information Security Policy to protect any Personal Data accessed or processed by it against unauthorised or unlawful processing or accidental loss, destruction, damage or disclosure. The parties agree that for the purposes of the processing hereunder, the measures contained within the Darktrace Information Security Policy are appropriate, given the nature of the data to be processed and the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction, disclosure, access or damage.

## 8. PERSONAL DATA BREACH NOTIFICATION

- 8.1 In the event that the Data Processor suffers a Personal Data Breach, the Data Processor shall inform the Data Controller within twenty-four (24) hours upon learning of the same and reasonably cooperate with the Data Controller to mitigate the effects and to minimise any damage resulting therefrom. To the extent reasonably possible, the notification to the Data Controller shall include: (i) a description of the nature of the incident, including where possible the categories

and approximate number of data subjects concerned and the categories and approximate number of Personal Data records concerned; (ii) the name and contact details of the Data Processor's data protection officer or another contact point where more information can be obtained; (iii) a description of the likely consequences of the incident; and (iv) a description of the measures taken or proposed to be taken by the Data Processor to address the incident including, where appropriate, measures to mitigate its possible adverse effects

## SUBPROCESSORS

- 9.1. Save as expressly provided herein, the Data Processor will not use subprocessors for the processing of Personal Data. For the purposes of providing Support Services alone: (i) The Data Controller hereby authorises the Data Processor to use its affiliates specified in the Support Services Datasheet to process Personal Data (the "Affiliate Subprocessors"); (ii) The Data Processor shall have in place with the Affiliate Subprocessors a written agreement equivalent to the terms contained herein to protect Personal Data; and (iii) The EU Model Clauses shall apply to the extent the processing of Personal Data by the Affiliate Subprocessors involves a transfer of Personal Data which originates in the EEA to a third country outside of the EEA. For such purposes, the Data Controller hereby authorises the Data Processor to enter into the EU Model Clauses with the Affiliate Subprocessors on the Data Controller's behalf.
- 9.2. Save for the foregoing, the Data Processor shall not engage any subprocessors without the prior written authorisation of the Data Controller. In the event that the Data Controller authorises the use by the Data Processor of any other subprocessors, the Data Processor shall procure that such subprocessors enter into a written agreement containing provisions no less stringent than this DPA.
- 9.3. The Data Processor shall be fully liable for any breach by the subprocessors of any data protection obligations set out in this Clause.

## 10. ASSISTANCE WHEN HANDLING REQUESTS FROM DATA SUBJECTS

- 10.1 Taking into account the nature of processing and the information available to the Data Processor, the Data Processor will provide reasonable support to the Data Controller: (i) in complying with any legally mandated request for access to or correction of any Personal Data by a data subject under Chapter III GDPR (and where such request is submitted to the Data Processor, the Data Processor will promptly notify the Data Controller of it); (ii) in responding to requests or demands made to the Data Controller by any court or governmental authority responsible for enforcing privacy or data protection laws; or (iii) in its preparation of a Data Protection Impact Assessment.

## 11. AUDIT

- 11.1 The Data Processor agrees to maintain ISO 27001 certification for the duration of the Term. The Data Processor will use an external auditor to verify that its security measures meet ISO 27001 standards in accordance with the ISO certification process. On the Data Controller's written request, and subject to appropriate confidentiality obligations, the Data Processor will make available to the Data Controller: (i) a copy of the current certificate in



relation to the ISO 27001 certification; and (ii) Information reasonably requested by the Data Controller in writing with regards to the Data Processor's processing of Personal Data under this DPA. The Data Controller agrees to exercise any right it may have to conduct an audit or inspection under GDPR (or the EU Model Clauses if they apply) by requesting the foregoing information.

## 12. RETURN/DESTRUCTION OF PERSONAL DATA

12.1 Upon termination of the Agreement, the Data Processor shall delete or return all Personal Data in accordance with the Data Controller's written instructions.

## Annex B Support Service Agreement

Support Services Overview	
<b>Overview</b>	<p>Darktrace provides remote assistance support for the Darktrace Offering . In addition to the Standard Support Services provided to all Customers, Customers have the flexibility to choose between Support Service Options listed below to address Customer's specific needs.</p> <p>Capitalised terms used, but not defined, herein will have the meanings ascribed to such terms in the Darktrace Master Customer Agreement or Product Order Form(s), as applicable, each between the Customer and Darktrace, and in the event of any conflict between the terms of this Support Services Data Sheet and such Master Customer Agreement or Product Order Form, as applicable, the terms of such Master Customer Agreement or Product Order Form, as applicable, will control.</p>
<b>Standard Support Services</b>	<ul style="list-style-type: none"> <li>• Darktrace provides all Customers with the following Standard Support Services:</li> <li>• Helpdesk</li> <li>• Software Updates</li> <li>• Hardware Support</li> <li>• Health Checks and System Diagnostics</li> <li>• Customer Portal</li> </ul>
<b>Support Service Options</b>	<ul style="list-style-type: none"> <li>• Not all Service Options are available for all of the Darktrace Offerings. The Support Service Options the Customer has chosen (if any) will be specified in Customer's Product Order Form and may include:</li> <li>• Ask the Expert – Call home required for specific analytical questions</li> <li>• 24/7 Proactive Threat Notification - Call Home is required</li> </ul>
<p>The availability of Support Services, including specific Support Services Options, may be subject to geographic limitations which vary across jurisdictions. Availability of Support Services must be checked at the time of purchase.</p>	

Standard Support Services	
Helpdesk	<p><u>Customer Portal</u>. Darktrace will provide support from its technical support personnel during the coverage hours. Support requests will be raised and responded to through the Customer Portal. Customer Portal support will be available in the English language.</p> <p><u>Telephone Hotline Support</u>. Darktrace provides telephone assistance from its technical support personnel during the Coverage Window . Telephone support will be available in the English language. The Telephone Hotline Support numbers are available on the Customer Portal or otherwise available on request. To receive telephone support, customers must have a Customer Portal account and pass authentication checks.</p> <p>For instructions on how to raise support tickets and open a support case, Customer should refer to the Darktrace Support Guide, available on the Customer Portal or otherwise available on request.</p> <p>For reported problems, Darktrace may initiate and perform remote diagnostics using electronic remote support tools or other means available, to access Customer equipment to facilitate remote problem resolution.</p> <p><u>Error Correction</u>. Darktrace will use reasonable endeavors to correct verifiable and reproducible errors based on standard reproducible test case methodology when reported to Darktrace by Customer in the Customer Portal . Where a verifiable error exists, i.e., that which constitutes unexpected or deviant code execution from baseline standard, the error correction, when completed, may be provided in the form of a software patch and/or a workaround. The Customer acknowledges that not all reported errors may be corrected. Customer agrees to implement temporary procedures or workarounds provided by Darktrace ("<u>Temporary Solutions</u>") while Darktrace works on a permanent solution. If Customer fails to implement any such Temporary Solutions, resulting in the failure of the Offering Darktrace will have no liability for such failure.</p>
Software Updates	<p>Darktrace will make available to Customer, for no additional charge, a copy of each Update. "<u>Update</u>" means new releases of the Offering containing error corrections, enhancements, updates which are made commercially available by Darktrace as part of maintenance and any corrections and updates to the associated Documentation. If a Customer has Call Home enabled, Updates can be delivered automatically. In the event that Updates are not automatically installed, Customer shall install the Updates within a reasonable time when made available on the Customer Portal. Updates are subject to the Darktrace End of Life Policy on the Customer Portal.</p>
	<p>For Customers receiving 24/7 Proactive Threat Notification, automatic updates are compulsory (Customer cannot opt out) and will be delivered automatically.</p>

<b>Hardware Support (Return to Base)</b>	<p>Subject to the General Requirements below, and other than racking, cables, data-feeds and third party products (such as taps and network aggregators). Darktrace provides all parts and materials necessary to maintain the Hardware in good operating condition, including parts and materials.</p> <p>Upon discovery of any failure of the Hardware and/or any component parts, Darktrace will ship replacement Hardware and/or component part(s) which may be an equivalent or a later revision (the “<u>Advance Replacement Hardware</u>”). While Darktrace will endeavor to ship Advance Replacement Hardware within a reasonable period, the Customer acknowledges and agrees that transport delays, import and export requirements, and other factors outside of Darktrace’s control may affect delivery timescales. Customer is responsible for performing the following functions prior to return shipping failed Hardware to Darktrace: a) perform all steps for self-test and trouble-shooting specified in the Hardware operating manual; b) provide, in writing, the Hardware’s model number, serial number, current failure symptoms, pertinent failure history and ship-to address (if applicable); c) unless the Hardware will be delivered and picked up in person by Darktrace, Customer is responsible for packaging the failed Hardware carefully in the original packaging or Darktrace-provided shipping container, or a shipping container that prevents it from being damaged while in transit to Darktrace; and d) all parts originally shipped must be returned, including rails, transceivers and power cables.</p> <p>Darktrace will not be responsible for maintaining or protecting any configuration settings or data found on the returned Hardware or component part(s).</p> <p>Replacement parts provided under Hardware support may be whole unit replacements, or may be new or functionally equivalent to new in performance and reliability. .</p> <p>Should (i) the Hardware or component parts returned by Customer be deemed not to be defective or ‘no fault found’, or (ii) a returned Hardware be missing any hardware or component parts, or (iii) Customer fails to return allegedly defective Hardware or any component parts requested by Darktrace within the time limit required, Darktrace will invoice for, and Customer agrees to pay the cost of, the Hardware and/or component parts, as applicable.</p> <p>For components that are discontinued, an upgrade path may be required. Darktrace will work with Customer to recommend a replacement part.</p>
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	<p>Customer is, at all times, in control of authorising and issuing employees, contractors, agents or Outsource Providers (collectively, “Personnel”) with access to the Customer Portal. Darktrace provides the Customer Portal subject to the terms of the Agreement and Customer remains responsible for ensuring that any use of the Customer Portal by its Personnel complies with the provisions thereof.</p> <ul style="list-style-type: none"> <li>• These activities are restricted to Customer’s Primary Users. “Primary User” means a designated individual named on the Customer Portal as a Primay User.</li> </ul>
<b>Health Check and System Diagnostics</b>	<p>The health checks diagnostics are continual and include but are not limited to the following types of metrics, as applicable to the Offering:</p> <ul style="list-style-type: none"> <li>• CPU performance</li> <li>• Memory utilization</li> <li>• Appliance load</li> <li>• Number of unique devices seen on network (numeric value)</li> <li>• Bandwidth per interface</li> <li>• Errors on interface</li> <li>• Connections per minute</li> <li>• Disk utilization</li> <li>• Alert metrics (numeric values)</li> </ul> <p>Additionally, if any diagnostic troubleshooting is required, a Darktrace technical support personnel can run diagnostic tools via Call Home to assist in determining the cause of any issues.</p>
<b>Customer Portal</b>	<p>Darktrace’s Customer Portal is available to all customers under Support. Through the Customer Portal, Customer may:</p> <ul style="list-style-type: none"> <li>• Raise support tickets.</li> <li>• Manage users*</li> <li>• Add/remove contacts for notifications*</li> <li>• Sign up for training sessions</li> <li>• View training videos</li> <li>• Read documentation and blog posts</li> <li>• Download software and appliance updates</li> <li>• Sign up to marketing events and promotions</li> </ul>



Support Service Options	
<b>Ask the Expert</b>	<p>As a Support Service Option, Customer may elect in a Product Order Form to receive Ask the Expert. If selected, Customer can enter requests for assistance on live threat investigations from the Darktrace UI or via the Customer Portal. In the event Customer does not have Call Home, Ask the Expert tickets can be raised on the Customer Portal. For queries requesting analytical investigations, call home will be required.</p> <p>Urgent enquires regarding raised tickets may be followed up by contacting the Support Contact Number on +44 (0) 808 189 3465 (UK); or +1 646 893 7898 (US).</p> <p>For instructions on how to raise support tickets and open a support case, Customer should refer to the Darktrace Support Guide, available on the Customer Portal or otherwise available on request.</p>
<b>24/7 Proactive Threat Notification</b>	<p>As a Support Service Option, the Customer may elect in a Product Order Form to receive 24/7 Proactive Threat Notifications. If elected, Darktrace will automatically alert Customer's named operators when a significant and likely high-impact Alert anomaly is detected by the Software (utilizing a subset of Darktrace's standard models identified by the label "Enhanced Monitoring").</p>

Assumptions	
<b>Duration</b>	<p>Support Services coverage period starts on the Commencement Date of the Offering and continues for the period of time specified in the applicable Product Order Form. Darktrace will only be liable to provide Support Services if the Customer is current with its payment of fees to Darktrace..</p> <p>If Customer does not renew a Support Services term, but continues to access the Support Services, Darktrace will be entitled to invoice Customer for any period of Support Services provided. If Customer cancels, but later seeks to reinstate Support Services, Customer will be responsible for the payment of all back fees in regards to such Support Services.</p>

<b>Call Home</b>	<p>The Darktrace Offering can be configured to connect to the Darktrace's secure and encrypted channel to receive, patches and Updates. For certain of the Support Services Options, the remote analyst support is dependent on the granting of Call Home access for the analysts to be able to interact with the Offering. A Darktrace Offering operating Call Home will attempt to establish a secure SSH channel with the Darktrace infrastructure. Each Darktrace installation will have a unique hostname pre-set in the configuration, resolving to a single Darktrace central IP address. To enable Call Home to function, Darktrace must be permitted to contact the four Darktrace IP addresses over TCP Port 22 or TCP Port 443. At Darktrace's discretion, Support Services may also be provided using remote diagnosis and support, onsite service or through other Support Services delivery methods, or any combination thereof. If any onsite support is provided, Customer will be charged for any applicable travel fees and expenses. Customer agrees that Darktrace may extract and use Alert data (which may include Personal Data) for the purposes of (i) improving Customer's deployment of the Offering and (ii) developing the Offering more generally.</p>
<b>Customer Responsibilities</b>	<p>Upon Darktrace's request, Customer will be responsible for assisting Darktrace in resolving the problem remotely in providing all information necessary for Darktrace to deliver timely and professional remote support or to enable Darktrace to determine the level of support eligibility, including;</p> <ul style="list-style-type: none"> <li>• Starting self-tests and/or other diagnostic tools and programs; and</li> <li>• Installing customer-installable firmware updates and patches</li> <li>• Performing other reasonable activities to help Darktrace identify and resolve the problem.</li> </ul>
	<p>Darktrace may also provide Customer with self-installable parts or units, to Customer following written instructions from Darktrace.</p> <p>Darktrace does not provide backup services. Customer must maintain a separate backup system or procedure for its network data that is not dependent on the Offering.</p> <p>Customer will notify Darktrace if it uses the Offering in an environment that poses a potential health or safety hazard to Darktrace employees providing onsite Support Services. Darktrace may require Customer maintains the Offering under Darktrace's supervision and may postpone any onsite Support Services until such hazard(s) are remedied.</p>

<b>General Requirements</b>	<p>Darktrace will not be liable to provide Support Services with respect to a which is faulty on the basis of: (i) improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Documentation or these terms; (ii) failure or functional limitations of any non-Darktrace software or product impacting systems receiving Darktrace Hardware Support Services; (iii) malware (e.g. virus, worm, etc.) introduced by Customer; or (iv) modifications or improper system maintenance or calibration not performed by Darktrace or authorized in writing by Darktrace; (v) fire damage, water damage, accident, electrical disturbances, transportation by Customer, or other causes beyond Darktrace's control; (vi) or use not in line with a proper manner or in conditions which adequately protect and preserve the Hardware.</p> <p>NO ADVICE, ALERT, OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM DARKTRACE OR THROUGH OR FROM THE SUPPORT SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN OR IN THE MASTER CUSTOMER AGREEMENT. DARKTRACE SHALL NOT BE LIABLE FOR ANY ERRORS OR DELAYS IN THE CONTENT OR ALERTS AVAILABLE THROUGH THE SUPPORT SERVICES, OR FOR ANY ACTIONS TAKEN IN RELIANCE THEREON. THE CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT NOT ALL ANOMALIES / INTRUSIONS MAY BE REPORTED.</p> <p>Darktrace may discontinue specific Support Services no longer included in Darktrace's Offering upon six (6) months' prior written notice, unless otherwise agreed in writing. If Darktrace cancels prepaid Support Services pursuant to this paragraph, Darktrace will refund Customer a pro-rated amount for such unused prepaid Support Services. The Darktrace end of life Software policy is available on the Customer Portal.</p> <p>Additional services performed by Darktrace at Customer's request, which are not included in the Support Services, will be agreed by the Parties in advance and chargeable at the applicable published service rates for the country where the services are to be performed.</p>
<b>Coverage Window</b>	<p>The coverage window specifies the coverage hours during which Customer calls may be logged and service is delivered remotely or onsite (as applicable). Helpdesk and Hardware Support will be available 24/7 (24 hours per day, Monday through Sunday)</p>
<b>Affiliates</b>	<p>Customer acknowledges that the following Darktrace Affiliates may be involved in the provision of Support Services:</p> <ul style="list-style-type: none"> <li>- Darktrace, Inc.</li> <li>- Darktrace Australia Pty Ltd.</li> <li>- Darktrace Japan K.K</li> <li>- Darktrace Singapore Pte Ltd.</li> <li>- Darktrace South Africa Pty Ltd.</li> </ul>
<b>Japan Only</b>	<p>Darktrace will use commercially reasonable efforts to provide telephone hotline support and ticket support in the Japanese language during the coverage window of 10:30am-6:30pm Japan time Monday through Friday.</p>