



**Crown
Commercial
Service**

G-Cloud 10 Call-Off Contract

Between

**The Secretary of State for
The Department for Education**

And

Merkle UK Three Limited

G-Cloud 10 Call-Off Contract

This Call-Off Contract for the G-Cloud 10 Framework Agreement (RM1557.10) includes:

| | |
|---|-------------------------------------|
| Part A - Order Form | 3 |
| Schedule 1 - Services | 10 |
| Schedule 2 - Call-Off Contract charges | 10 |
| Part B - Terms and conditions | 11 |
| Schedule 3 - Collaboration agreement - Not Used | 29 |
| Schedule 4 - Alternative clauses - DfE Additional Terms and Conditions | 29 |
| Schedule 5 - Guarantee - Not Used | 30 |
| Schedule 6 - Glossary and interpretations | 30 |
| Schedule 7 - Processing, Personal Data and Data Subjects | Error! Bookmark not defined. |

Part A - Order Form

| | |
|---|--|
| Digital Marketplace service ID number: | 790085134819159 |
| Call-Off Contract reference: | ICT2019/001 |
| Call-Off Contract title: | G-Cloud Lot 2 – Cloud Software |
| Call-Off Contract description: | Google Analytics 360 Licence and related professional services from Merkle Periscopix. |
| Start date: | 1 st November 2018 |
| Expiry date: | 31 st October 2019 |
| Call-Off Contract value: | Up to £131,160 (including VAT) of which £109,300 is for Google Analytics 360, licence and service fees |
| Charging method: | BACS |
| Purchase order number: | TBC |

This Order Form is issued under the G-Cloud 10 Framework Agreement (RM1557.10).

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

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

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

| | |
|------------------------|--|
| From: the Buyer | The Secretary of State for the Department for Education Sanctuary Buildings Great Smith Street London SW1P 3BT |
|------------------------|--|

| | |
|--------------------------------|---|
| To: the Supplier | Merkle UK Three Limited Arc House 82 Tanner Street London SE1 3GN |
| Together: the 'Parties' | |

Principle contact details

| | |
|--------------------------|--|
| For the Buyer: | Title: Contract & Commercial Manager Name: Atifa Sadiq Email: Atifa.sadiq@education.gov.uk Phone: 07384872604 |
| For the Supplier: | Title: Head of Analytics Name: Ben Gott Email: bgott@merkleinc.com Phone: 033 0060 6065 |
| | |

Call-Off Contract term

| | |
|------------------------------|--|
| Start date: | This Call-Off Contract Starts on 1 st November 2018 and is valid for 12 Months. |
| Ending (termination): | The notice period needed for Ending the Call-Off Contract is at least 90 Working Days from the date of written notice for disputed sums or at least 30 days from the date of written notice for Ending without cause. |
| Extension period: | This Call-Off Contract can be extended by the Buyer for 1 period of up 12 months each, by giving the Supplier 1 months written notice before its expiry. 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. The extension period after 24 months should not exceed the maximum permitted under the Framework Agreement which is 2 periods of up to 12 months each. |

| | |
|--|--|
| | <p>Under the Spend Controls process, prior approval must be obtained from the Government Digital Service (GDS) if the:</p> <ul style="list-style-type: none"> • Buyer is a central government department • contract Term is intended to exceed 24 months |
|--|--|

Buyer contractual details

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

| | |
|-----------------------------------|---|
| G-Cloud Lot: | <p>This Call-Off Contract is for the provision of Services under: Lot 2 - Cloud Software</p> |
| G-Cloud services required: | <p>The Services to be provided by the Supplier under the above Lot are listed in Framework Section 2 and outlined below:</p> <p>Google Analytics 360 (GA360) licence for use across Buyer’s web estate at an enterprise level. Licence and support package to include twelve (12) days professional services, whether consumed or not over the Call-Off Contract Term</p> |
| Additional services: | <p>The Buyer reserves the option to procure additional services in line with the Buyer’s detailed requirements.</p> <p>Additional Professional Services of up to twelve (12) days provided on a time and materials (T&M) basis and agreed between the Buyer and the Supplier following completion of the Request for Quote for Additional Services Template embedded as “RfQ” in the ‘Supplemental requirements’ section of this Call-Off Contract.</p> <p>Professional Service support will include, but not limited to:</p> <ul style="list-style-type: none"> • Google Analytics Support • Google Analytics Implementation Consulting • Google Analytics 360 Suite Product Support • Tealium Support • Tag Management Consulting • Data Visualisation Assistance |

| | |
|-------------------------------------|---|
| | <ul style="list-style-type: none"> • Big Query Consulting. |
| Location: | Unless otherwise agreed, the Services shall be provided at the Buyer's offices at Cheylesmore House, Quinton Road, Coventry CV1 2WT, UK |
| Quality standards: | The Supplier will carry out the services with reasonable care and skill. All services supplied shall exceed, or be fit for the particular purpose, for which they are supplied with reference to the Customer's requirements - in line with quality standards detailed in the Supplier's offering on G-Cloud 10 |
| Technical standards: | The Supplier will carry out the services with reasonable care and skill. All services supplied shall exceed, or be fit for the particular purpose, for which they are supplied with reference to the Customer's requirements - in line with technical standards detailed in the Supplier's offering on G-Cloud 10 |
| Service level agreement: | The service level and availability criteria required for this Call-Off Contract are as per the attached document, and as outlined in Schedule 1 |
| Onboarding: | N/A |
| Offboarding: | The offboarding plan for this Call-Off Contract is to be prepared by the Supplier and agreed with the DfE within eight [8] weeks of contract commencement |
| Collaboration agreement: | N/A |
| Limit on Parties' liability: | <p>The annual total liability of either Party for all Property defaults will not exceed £1,000,000.</p> <p>The annual total liability for Buyer Data defaults will not exceed 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term.</p> <p>The annual total liability for all other defaults will not exceed 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term.</p> |
| Insurance: | <p>The insurance(s) required will be:</p> <ul style="list-style-type: none"> • a minimum insurance period of six [6] years following the expiration or Ending of this Call-Off Contract • Professional indemnity insurance cover to be held by the Supplier and by any agent, Subcontractor or consultant involved in the supply of the G-Cloud Services. This professional indemnity insurance cover will have a minimum limit of indemnity of £1,000,000 for each individual claim or any higher limit the Buyer requires (and as required by Law)] • Employers' liability insurance with a minimum limit of £5,000,000 or any higher minimum limit required by Law] |
| Force majeure: | A Party may End this Call-Off Contract if the Other Party is affected by a Force Majeure Event that lasts for more than ten (10) consecutive days. |
| Audit: | The following Framework Agreement audit provisions will be incorporated under clause 2.1 of this Call-Off Contract to enable the Buyer to carry out |

| | |
|----------------------------------|--|
| | <p>audits. Notwithstanding any other term to the contrary, any such audits shall be subject to the following:</p> <ul style="list-style-type: none"> - The Buyer shall give the Supplier prior written notice of its intention to conduct an audit; - The audit shall take place during the Supplier’s normal business hours; and - The Buyer shall comply with the Supplier’s health and safety, confidentiality and IT/security policies and procedures in force from time to time at the premises where the audit is performed. <p>The Supplier will maintain full and accurate records and accounts, using Good Industry Practice and generally accepted accounting principles, of the:</p> <ul style="list-style-type: none"> • operation of the Framework Agreement and the Call-Off Contracts entered into with Buyers • Services provided under any Call-Off Contracts (including any Subcontracts) • amounts paid by each Buyer under the Call-Off Contracts <p>These provisions will be applicable for a further Twelve (12) Months after the expiry of the Call-Off Agreement Period or following termination of this Call-Off Agreement.</p> |
| Buyer’s responsibilities: | The Buyer is responsible for as obligations agreed between the Buyer and Supplier via the RfQ template embedded in ‘Supplemental requirements’ set out below. |
| Buyer’s equipment: | N/A |

Supplier’s information

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

Call-Off Contract charges and payment

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

| | |
|-------------------------|---|
| Payment method: | The payment method for this Call-Off Contract is BACS |
| Payment profile: | The payment profile for this Call-Off Contract is monthly in arrears. |
| Invoice details: | <p>The Supplier will issue electronic invoices monthly in arrears. The Buyer will pay the Supplier within 30 days of receipt of a valid invoice, submitted in accordance with the preferred payment method, payment profile and the provisions of this Call-Off Agreement.</p> <p>The Supplier shall work with the Buyer to minimise the impact on the public purse for T&S associated with the operation of this contract. If expenditure on T&S is identified as being necessary, T&S will be paid at the level</p> |

| | <p>commensurate with the DfE rate in place at the time the expenditure is incurred. DfE rates in place as at April 2017 are listed below:</p> <ul style="list-style-type: none"> • Hotel accommodation bed and breakfast – London £110.00 including VAT and elsewhere £75.00 including VAT • Rail travel shall be restricted to standard class • Car mileage at the 'Public Transport Rate' of 0.25p per mile • Taxis only payable where their use can be justified against using public transport <p>No other out of pocket expenses shall be allowable.</p> <p>Invoices will be submitted in arrears and in accordance with the provisions of this Call-Off Agreement.</p> | | | | |
|---|---|----------------|---------------|---|---|
| <p>Who and where to send invoices to:</p> | <p>Services may be called off and procured by the Buyer or an Executive Agency of the Buyer (the Education and Skills Funding Agency (ESFA)) and unless otherwise agreed, invoices will be sent to organisation procuring the Services from the Supplier, as set out below respectively.</p> <table border="1" data-bbox="427 931 1461 1373"> <thead> <tr> <th data-bbox="427 931 826 976">For the Buyer:</th> <th data-bbox="834 931 1461 976">For the ESFA:</th> </tr> </thead> <tbody> <tr> <td data-bbox="427 976 826 1373"> Department for Education – PO BOX 407 SSCL Phoenix House, Celtic Springs Bus. Park Newport NP10 8FZ APinvoices-DFE-U@sscl.gse.gov.uk </td> <td data-bbox="834 976 1461 1373"> Accounting Service Centre ESFA. Cheylesmore House, Quinton Road, Coventry CV1 2WT AccountingServices.ESFA@education.gov.uk </td> </tr> </tbody> </table> | For the Buyer: | For the ESFA: | Department for Education – PO BOX 407 SSCL Phoenix House, Celtic Springs Bus. Park Newport NP10 8FZ APinvoices-DFE-U@sscl.gse.gov.uk | Accounting Service Centre ESFA. Cheylesmore House, Quinton Road, Coventry CV1 2WT AccountingServices.ESFA@education.gov.uk |
| For the Buyer: | For the ESFA: | | | | |
| Department for Education – PO BOX 407 SSCL Phoenix House, Celtic Springs Bus. Park Newport NP10 8FZ APinvoices-DFE-U@sscl.gse.gov.uk | Accounting Service Centre ESFA. Cheylesmore House, Quinton Road, Coventry CV1 2WT AccountingServices.ESFA@education.gov.uk | | | | |
| <p>Invoice information required – for example purchase order, project reference:</p> | <p>All invoices must include:</p> <ul style="list-style-type: none"> • be dated and have a unique invoice number; • quote a valid purchase order number; • include correct Supplier details; • specify the services supplied; specifically the equipment in use and associated charges • be for the correct sum – in accordance to costs agreed with the Customer; • be submitted to the payment profile set out above; and provide contact details for queries | | | | |
| <p>Invoice frequency:</p> | <p>Invoice will be sent to the Buyer monthly</p> | | | | |
| <p>Call-Off Contract value:</p> | <p>The total value of this Call-Off Contract is up to the value of £131,1600 including VAT (a proportion of the contract value relates to consumption services and over the duration of the Call-Off Contract the contract value may increase, for example, to cover any Machinery of Government Changes and site relocations)</p> | | | | |
| <p>Call-Off Contract charges:</p> | <p>Charges are as set out at Schedule 2</p> | | | | |

| | |
|--|--|
| | All current and future charges will not exceed the applicable Call-Off Contract Charges (in accordance with the Supplier’s Digital Marketplace pricing document) during the term of the Call-Off Contract. |
|--|--|

Additional buyer terms

| | |
|---|--|
| Performance of the service and deliverables: | As set out in the RfQ and agreed between the Buyer and the Supplier following completion of the Request for Quote for Additional Services Template embedded as “RfQ” in the ‘Supplemental requirements’ section of this Call-Off Contract. |
| Guarantee: | N/A |
| Warranties, representations: | N/A |
| Supplemental requirements in addition to the Call-Off terms: | RfQ Template attached; <small>RfQ Additional Services Periscopeix</small> |
| Alternative clauses: | N/A |
| Buyer specific amendments to/refinements of the Call-Off Contract terms: | Buyers Additional Clauses, attached at Annex A in Schedule 4, will apply. |
| Public Services Network (PSN): | N/A |
| Personal Data and Data Subjects: | Will Schedule 7 – Processing, Personal Data and Data Subjects be used No |

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.

MERKLE | MERKLE | MERKLE | PERISCOPIX – GA 360 SERVICE

1.4 In cases of any ambiguity or conflict the terms and conditions of the Call-Off Contract and Order Form will supersede those of the Supplier Terms and Conditions.

2. Background to the agreement

(A) The Supplier is a provider of G-Cloud Services and agreed to provide the Services under the terms of Framework Agreement number RM1557.10.

(B) The Buyer provided an Order Form for Services to the Supplier.

| | | |
|-------------------|---|--|
| Signed: | Supplier | Buyer |
| Name: | Ben Gott | [Enter text] L GREEN |
| Title: | SVP | [Enter text] DD |
| Signature: | X  | X  |
| Date: | 30/01/19 | [Enter text] 28/2/19 |

Schedule 1 – Services

Service Scope -
Periscopix GCloud 10

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:

| FEES | | | | |
|----------------------------|----|---------------|------------|-------------|
| Annual GA360 Services fees | | | | |
| Hits in a month | | Fee for month | | Annual Cost |
| 0 | to | 500,000,000 | £9,108.33 | £109,300 |
| 500,000,001 | to | 1,000,000,000 | £11,525.00 | £138,300 |
| 1,000,000,001 | to | 2,000,000,000 | £14,691.67 | £176,300 |
| 2,000,000,001 | to | 3,000,000,000 | £17,191.67 | £206,300 |
| 3,000,000,001 | to | 5,000,000,000 | £23,875.00 | £286,500 |

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, as long as 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)
- 5.2 to 5.3 (Force majeure)
- 5.6 (Continuing rights)
- 5.7 to 5.9 (Change of control)
- 5.10 (Fraud)
- 5.11 (Notice of fraud)
- 7.1 to 7.2 (Transparency)
- 8.3 (Order of precedence)
- 8.4 (Relationship)
- 8.7 to 8.9 (Entire agreement)

- 8.10 (Law and jurisdiction)
- 8.11 to 8.12 (Legislative change)
- 8.13 to 8.17 (Bribery and corruption)
- 8.18 to 8.27 (Freedom of Information Act)
- 8.28 to 8.29 (Promoting tax compliance)
- 8.30 to 8.31 (Official Secrets Act)
- 8.32 to 8.35 (Transfer and subcontracting)
- 8.38 to 8.41 (Complaints handling and resolution)
- 8.49 to 8.51 (Publicity and branding)
- 8.42 to 8.48 (Conflicts of interest and ethical walls)
- 8.52 to 8.54 (Equality and diversity)
- 8.66 to 8.67 (Severability)
- 8.68 to 8.82 (Managing disputes)
- 8.83 to 8.91 (Confidentiality)
- 8.92 to 8.93 (Waiver and cumulative remedies)
- paragraphs 1 to 10 of the Framework Agreement glossary and interpretations
- 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:

- a reference to the 'Framework Agreement' will be a reference to the 'Call-Off Contract'
- a reference to 'CCS' will be a reference to 'the Buyer'
- 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 Framework Agreement incorporated clauses will be referred to as 'incorporated Framework clause XX', where 'XX' is the Framework Agreement clause number.

2.4 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:

- be appropriately experienced, qualified and trained to supply the Services
- apply all due skill, care and diligence in faithfully performing those duties

- obey all lawful instructions and reasonable directions of the Buyer and provide the Services to the reasonable satisfaction of the Buyer
- respond to any enquiries about the Services as soon as reasonably possible
- 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 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:
- have made their own enquiries and are satisfied by the accuracy of any information supplied by the other Party
 - are confident that they can fulfil their obligations according to the Call-Off Contract terms
 - have raised all due diligence questions before signing the Call-Off Contract
 - 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 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:

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

- a broker's verification of insurance
- receipts for the insurance premium
- 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:

- take all risk control measures using Good Industry Practice, including the investigation and reports of claims to insurers
- promptly notify the insurers in writing of any relevant material fact under any insurances
- 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:
- premiums, which it will pay promptly
 - 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 8.83 to 8.91. 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:
- rights granted to the Buyer under this Call-Off Contract
 - Supplier's performance of the Services
 - 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:

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

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

11.9 The indemnify in clause 11.5 above is subject to the Buyer:

- promptly notifying the Supplier of any such claim;
- making no admission of liability;
- providing all such information and assistance as the Supplier may require from time to time in relation to an IPR Claim;
- allowing the Supplier sole and full control of any proceedings, including settlement; and
- mitigating its loss to the fullest extent possible.

12. Protection of information

12.1 The Supplier must:

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

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

- complying with a data access request within the timescales in the Data Protection Legislation and following the Buyer's instructions
- providing the Buyer with any Buyer Personal Data it holds about a Data Subject (within the timescales required by the Buyer)
- 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

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

- 13.1 The Supplier will not store or use Buyer Data except if necessary to fulfil its obligations.
- 13.2 If Buyer Data is processed by the Supplier, the Supplier will supply the data to the Buyer as requested.
- 13.3 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 policy and all Buyer requirements in the Order Form.
- 13.4 The Supplier will preserve the integrity of Buyer Data processed by the Supplier and prevent its corruption and loss.
- 13.5 The Supplier will ensure that any Supplier system which holds any protectively marked Buyer Data or other government data will comply with:
- the principles in the Security Policy Framework at <https://www.gov.uk/government/publications/security-policy-framework> and the Government Security Classification policy at <https://www.gov.uk/government/publications/government-security-classifications>
 - guidance issued by the Centre for Protection of National Infrastructure on Risk Management at <https://www.cpni.gov.uk/content/adopt-risk-management-approach> and Accreditation of Information Systems at <https://www.cpni.gov.uk/protection-sensitive-information-and-assets>
 - the National Cyber Security Centre's (NCSC) information risk management guidance, available at <https://www.ncsc.gov.uk/guidance/risk-management-collection>
 - 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, available at <https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>
 - the security requirements of cloud services using the NCSC Cloud Security Principles and accompanying guidance at <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles>

- 13.6 The Buyer will specify any security requirements for this project in the Order Form.
- 13.7 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.
- 13.8 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.
- 13.9 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 available 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

MERKLE | MERKLE | MERKLE | PERISCOPIX – GA 360 SERVICE

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 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:
- 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
 - 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 CCS of any breach of security of CCS'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 CCS and Buyer 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, available at <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:
- an executed Guarantee in the form at Schedule 5
 - 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:

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

- a Supplier Default and if the Supplier Default cannot, in the reasonable opinion of the Buyer, be remedied
- any fraud

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

- 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
- an Insolvency Event of the other Party happens
- 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:

- any rights, remedies or obligations accrued before its Ending or expiration
- the right of either Party to recover any amount outstanding at the time of Ending or expiry
- 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); 8.42 to 8.48 (Conflicts of interest and ethical walls) and 8.92 to 8.93 (Waiver and cumulative remedies)
- 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:

- return all Buyer Data including all copies of Buyer software, code and any other software licensed by the Buyer to the Supplier under it
- return any materials created by the Supplier under this Call-Off Contract if the IPRs are owned by the Buyer
- 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
- 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
- work with the Buyer on any ongoing work
- 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 | Deemed time of delivery | Proof of service |
|--------------------|-------------------------|------------------|
|--------------------|-------------------------|------------------|

| | | |
|-------|--|---|
| Email | gam on the first Working Day after sending | Sent by PDF to the correct email address without getting an 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:

- 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
- there will be no adverse impact on service continuity
- there is no vendor lock-in to the Supplier’s Service at exit
- 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:

- 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
- 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
- the transfer of Project Specific IPR items and other Buyer customisations, configurations and databases to the Buyer or a replacement supplier
- the testing and assurance strategy for exported Buyer Data
- if relevant, TUPE-related activity to comply with the TUPE regulations
- 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:

- data (including Buyer Data), Buyer Personal Data and Buyer Confidential Information in the Supplier's possession, power or control
- 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:

- Property: for all defaults 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

- Buyer Data: for all defaults resulting in direct loss, destruction, corruption, degradation or damage to any Buyer Data caused by the Supplier's default will not exceed the amount in the Order Form
- Other defaults: for all other defaults, 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:
- comply with any security requirements at the premises and not do anything to weaken the security of the premises
 - comply with Buyer requirements for the conduct of personnel
 - comply with any health and safety measures implemented by the Buyer
 - 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

MERKLE | MERKLE | MERKLE | PERISCOPIX – GA 360 SERVICE

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:

- the activities they perform
- age
- start date
- place of work
- notice period
- redundancy payment entitlement
- salary, benefits and pension entitlements
- employment status
- identity of employer
- working arrangements
- outstanding liabilities
- sickness absence
- copies of all relevant employment contracts and related documents
- all information required under regulation 11 of TUPE or as reasonably requested by the Buyer

MERKLE | MERKLE | MERKLE | PERISCOPIX – GA 360 SERVICE

- 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:
- its failure to comply with the provisions of this clause
 - 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:
- work proactively and in good faith with each of the Buyer's contractors
 - 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

MERKLE | MERKLE | MERKLE | PERISCOPIX – GA 360 SERVICE

- 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 The Parties will comply with the Data Protection Legislation and agree that the Buyer is the Controller and the Supplier is the Processor. The only Processing the Supplier is authorised to do is listed at Schedule 8 unless Law requires otherwise (in which case the Supplier will promptly notify the Buyer of any additional Processing if permitted by Law).
- 33.2 The Supplier will, to the extent reasonably requested from the Buyer, assist the Buyer with the preparation of any Data Protection Impact Assessment required by the Data Protection Legislation before commencing any Processing (including provision of detailed information and assessments in relation to Processing operations, risks and measures) and must notify the Buyer immediately if it considers that the Buyer's instructions infringe the Data Protection Legislation.
- 33.3 The Supplier must have in place Protective Measures, details of which shall be provided to the Buyer on request, to guard against a Data Loss Event, which take into account the nature of the data, the harm that might result, the state of technology and the cost of implementing the measures.
- 33.4 The Supplier will ensure that the Supplier Staff only process Personal Data in accordance with this Call-Off Contract and take all reasonable steps to ensure the reliability and integrity of Supplier staff with access to Personal Data, including by ensuring they:
- i) are aware of and comply with the Supplier's obligations under this Clause;
 - ii) are subject to appropriate confidentiality undertakings with the Supplier
 - iii) are informed of the confidential nature of the Personal Data and don't publish, disclose or divulge it to any third party unless directed by the Buyer or in accordance with this Call-Off Contract
 - iv) are given training in the use, protection and handling of Personal Data.
- 33.5 The Supplier will not transfer Personal Data outside of the European Union unless the prior written consent of the Buyer has been obtained, which shall be dependent on such a transfer satisfying relevant Data Protection Legislation requirements.
- 33.6 The Supplier will delete or return Buyer's Personal Data (including copies) if requested in writing by the Buyer at the End or Expiry of this Call-Off Contract, unless required to retain the Personal Data by Law.
- 33.7 The Supplier will notify the Buyer without undue delay if it receives any communication from a third party relating to the Parties' obligations under the Data Protection Legislation, or it becomes aware of

a Data Loss Event, and will provide the Buyer with full and ongoing assistance in relation to each Party's obligations under the Data Protection Legislation, and insofar as this is possible, in accordance with any timescales reasonably required by the Buyer

- 33.8 The Supplier will maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- i) the Buyer determines that the Processing is not occasional;
 - ii) the Buyer determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - iii) the Buyer determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 33.9 Before allowing any Sub-processor to Process any Personal Data related to this Call-Off Contract, the Supplier must:
- i. notify the Buyer in writing of the proposed Sub-processor(s) and obtain its written consent;
 - ii. ensure that it has entered into a written agreement with the Sub-processor(s) which gives effect to obligations set out in this Clause 33 such that they apply to the Sub-processor(s); and
 - iii. inform the Buyer of any additions to, or replacements of the notified Sub-processors and the Buyer shall either i) provide its written consent or ii) object.
- 33.10 The Buyer may at any time put forward a Variation request to amend this Call-Off Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Schedule 3 - Collaboration agreement

Not Used

SOSchedule 4 - Alternative clauses – DfE Supplementary Terms and Conditions



Annex%20A%20Dea
partment%20Special%

Schedule 5 - Guarantee

Not Used

Schedule 6 - Glossary and interpretations

In this Call-Off Contract the following expressions mean:

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

| | |
|---|--|
| Call-Off Contract | This call-off contract entered into following the provisions of the Framework Agreement for the provision of Services made between the Buyer and the Supplier comprising the Order Form, the Call-Off terms and conditions, the Call-Off schedules and the Collaboration Agreement. |
| Charges | The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under this Call-Off Contract. |
| Collaboration Agreement | An agreement, substantially in the form set out at Schedule 3, between the Buyer and any combination of the Supplier and contractors, to ensure collaborative working in their delivery of the Buyer's Services and to ensure that the Buyer receives end-to-end services across its IT estate. |
| Commercially Sensitive Information | Information, which the Buyer has been notified about by the Supplier in writing before the Start Date with full details of why the Information is deemed to be commercially sensitive. |
| Confidential Information | Data, personal data and any information, which may include (but isn't limited to) any: <ul style="list-style-type: none"> ● information about business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above ● other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential'). |
| Control | 'Control' as defined in section 1124 and 450 of the Corporation Tax Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly. |
| Controller | Takes the meaning given in the Data Protection Legislation. |
| Crown | The government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies carrying out functions on its behalf. |
| Data Loss Event ² | Means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed |
| Data Protection Impact Assessment | An assessment by the Controller of the impact of the envisaged processing by the Processor under this Call-Off Contract on the protection of Personal Data. |
| Data Protection Legislation | Data Protection Legislation means: |

| | |
|---|--|
| | <ul style="list-style-type: none"> i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; iii) all applicable Law about the processing of personal data and privacy, including if applicable legally binding guidance and codes of practice issued by the Information Commissioner. |
| Data Subject | Takes the meaning given in the Data Protection Legislation. |
| Default | <p>Default is any:</p> <ul style="list-style-type: none"> ● breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term) ● other default, negligence or negligent statement of the Supplier, of its Subcontractors or any Supplier Staff (whether by act or omission), in connection with or in relation to this Call-Off Contract <p>Unless otherwise specified in the Framework Agreement the Supplier is liable to CCS for a Default of the Framework Agreement and in relation to a Default of the Call-Off Contract, the Supplier is liable to the Buyer.</p> |
| Deliverable | The G-Cloud Services the Buyer contracts the Supplier to provide under this Call-Off Contract. |
| Digital Marketplace | The government marketplace where Services are available for Buyers to buy. (https://www.digitalmarketplace.service.gov.uk/) |
| DPA 2018 | Data Protection Act 2018. |
| Employment Regulations | The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) ('TUPE') which implements the Acquired Rights Directive. |
| End | Means to terminate; and Ended and Ending are construed accordingly. |
| Environmental Information Regulations or EIR | The Environmental Information Regulations 2004 together with any guidance or codes of practice issued by the Information Commissioner or relevant Government department about the regulations. |
| Equipment | The Supplier's hardware, computer and telecoms devices, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from CCS or the Buyer) in the performance of its obligations under this Call-Off Contract. |
| ESI Reference Number | The 14 digit ESI reference number from the summary of outcome screen of the ESI tool. |

| | |
|--|--|
| Employment Status Indicator test tool or ESI tool | The HMRC Employment Status Indicator test tool. The most up-to-date version must be used. At the time of drafting the tool may be found here: http://tools.hmrc.gov.uk/esi |
| Expiry Date | The expiry date of this Call-Off Contract in the Order Form. |
| Force Majeure | <p>A Force Majeure event means anything affecting either Party's performance of their obligations arising from any:</p> <ul style="list-style-type: none"> ● acts, events or omissions beyond the reasonable control of the affected Party ● riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare ● acts of government, local government or Regulatory Bodies ● fire, flood or disaster and any failure or shortage of power or fuel ● industrial dispute affecting a third party for which a substitute third party isn't reasonably available <p>The following do not constitute a Force Majeure event:</p> <ul style="list-style-type: none"> ● any industrial dispute about the Supplier, its staff, or failure in the Supplier's (or a Subcontractor's) supply chain ● any event which is attributable to the wilful act, neglect or failure to take reasonable precautions by the Party seeking to rely on Force Majeure ● the event was foreseeable by the Party seeking to rely on Force Majeure at the time this Call-Off Contract was entered into ● any event which is attributable to the Party seeking to rely on Force Majeure and its failure to comply with its own business continuity and disaster recovery plans |
| Former Supplier | A supplier supplying services to the Buyer before the Start Date that are the same as or substantially similar to the Services. This also includes any Subcontractor or the Supplier (or any subcontractor of the Subcontractor). |
| Framework Agreement | The clauses of framework agreement RM1557.10 together with the Framework Schedules. |
| Fraud | Any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Crown. |
| Freedom of Information Act or FOIA | The Freedom of Information Act 2000 and any subordinate legislation made under the Act together with any guidance or codes of practice issued by the Information Commissioner or relevant Government department in relation to the legislation. |
| GA 360 Services | As defined in Schedule 7. |

| | |
|---|--|
| G-Cloud Services | The cloud services described in Framework Agreement Section 2 (Services Offered) as defined by the Service Definition, the Supplier Terms and any related Application documentation, which the Supplier must make available to CCS and Buyers and those services which are deliverable by the Supplier under the Collaboration Agreement. |
| GDPR | The General Data Protection Regulation (Regulation (EU) 2016/679). |
| Good Industry Practice | Standards, practices, methods and process conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar undertaking in the same or similar circumstances. |
| Guarantee | The guarantee described in Schedule 5. |
| Guidance | Any current UK Government guidance on the Public Contracts Regulations 2015. In the event of a conflict between any current UK Government guidance and the Crown Commercial Service guidance, current UK Government guidance will take precedence. |
| Indicative Test | ESI tool completed by contractors on their own behalf at the request of CCS or the Buyer (as applicable) under clause 4.6. |
| Information | Has the meaning given under section 84 of the Freedom of Information Act 2000. |
| Information Security Management System | The information security management system and process developed by the Supplier in accordance with clause 16.1. |
| Inside IR35 | Contractual engagements which would be determined to be within the scope of the IR35 Intermediaries legislation if assessed using the ESI tool. |
| Insolvency Event | Can be: <ul style="list-style-type: none"> ● a voluntary arrangement ● a winding-up petition ● the appointment of a receiver or administrator ● an unresolved statutory demand ● a Schedule A1 moratorium. |
| Intellectual Property Rights or IPR | Intellectual Property Rights are: <ul style="list-style-type: none"> ● copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information ● applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction |

| | |
|---------------------------|---|
| | <ul style="list-style-type: none"> ● all other rights having equivalent or similar effect in any country or jurisdiction |
| Intermediary | <p>For the purposes of the IR35 rules an intermediary can be:</p> <ul style="list-style-type: none"> ● the supplier's own limited company ● a service or a personal service company ● a partnership <p>It does not apply if you work for a client through a Managed Service Company (MSC) or agency (for example, an employment agency).</p> |
| IPR Claim | A claim as set out in clause 11.5. |
| IR35 | IR35 is also known as 'Intermediaries legislation'. It's a set of rules that affect tax and National Insurance where a Supplier is contracted to work for a client through an Intermediary. |
| IR35 Assessment | Assessment of employment status using the ESI tool to determine if engagement is Inside or Outside IR35. |
| Know-How | All ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the G-Cloud Services but excluding know-how already in the Supplier's or CCS's possession before the Start Date. |
| Law | Any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, judgment of a relevant court of law, or directives or requirements of any Regulatory Body. |
| LED | Law Enforcement Directive (EU) 2016/680. |
| Loss | All losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and 'Losses' will be interpreted accordingly. |
| Lot | Any of the 3 Lots specified in the ITT and Lots will be construed accordingly. |
| Malicious Software | Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence. |
| Management Charge | The sum paid by the Supplier to CCS being an amount of up to 1% but currently set at 0.75% of all Charges for the Services invoiced to |

| | |
|---------------------------------|---|
| | Buyers (net of VAT) in each month throughout the duration of the Framework Agreement and thereafter, until the expiry or End of any Call-Off Contract. |
| Management Information | The management information specified in Framework Agreement section 6 (What you report to CCS). |
| Material Breach | Those breaches which have been expressly set out as a material breach and any other single serious breach or persistent failure to perform as required under this Call-Off Contract. |
| Ministry of Justice Code | The Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000. |
| New Fair Deal | The revised Fair Deal position in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 as amended. |
| Order | An order for G-Cloud Services placed by a Contracting Body with the Supplier in accordance with the Ordering Processes. |
| Order Form | The order form set out in Part A of the Call-Off Contract to be used by a Buyer to order G-Cloud Services. |
| Ordered G-Cloud Services | G-Cloud Services which are the subject of an Order by the Buyer. |
| Outside IR35 | Contractual engagements which would be determined to not be within the scope of the IR35 intermediaries legislation if assessed using the ESI tool. |
| Party | The Buyer or the Supplier and 'Parties' will be interpreted accordingly. |
| Personal Data | Takes the meaning given in the Data Protection Legislation. |
| Personal Data Breach | Takes the meaning given in the Data Protection Legislation. |
| Processing | Takes the meaning given in the Data Protection Legislation but, for the purposes of this Call-Off Contract, it will include both manual and automatic Processing. 'Process' and 'processed' will be interpreted accordingly. |
| Processor | Takes the meaning given in the Data Protection Legislation. |
| Prohibited Act | To directly or indirectly offer, promise or give any person working for or engaged by a Buyer or CCS a financial or other advantage to: <ul style="list-style-type: none"> ● induce that person to perform improperly a relevant function or activity ● reward that person for improper performance of a relevant function or activity ● commit any offence: |

| | |
|---------------------------------------|--|
| | <ul style="list-style-type: none"> ○ under the Bribery Act 2010 ○ under legislation creating offences concerning Fraud ○ at common Law concerning Fraud ○ committing or attempting or conspiring to commit Fraud |
| Project Specific IPRs | Any intellectual property rights in items created or arising out of the performance by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call-Off Contract including databases, configurations, code, instructions, technical documentation and schema but not including the Supplier's Background IPRs. |
| Property | Assets and property including technical infrastructure, IPRs and equipment. |
| Protective Measures | Appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it. |
| PSN or Public Services Network | The Public Services Network (PSN) is the Government's high-performance network which helps public sector organisations work together, reduce duplication and share resources. |
| Regulatory Body or Bodies | Government departments and other bodies which, whether under statute, codes of practice or otherwise, are entitled to investigate or influence the matters dealt with in this Call-Off Contract. |
| Relevant Person | Any employee, agent, servant, or representative of the Buyer, any other public body or person employed by or on behalf of the Buyer, or any other public body. |
| Relevant Transfer | A transfer of employment to which the Employment Regulations applies. |
| Replacement Services | Any services which are the same as or substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services after the expiry or Ending or partial Ending of the Call-Off Contract, whether those services are provided by the Buyer or a third party. |
| Replacement Supplier | Any third party service provider of Replacement Services appointed by the Buyer (or where the Buyer is providing replacement Services for its own account, the Buyer). |
| Services | The services ordered by the Buyer as set out in the Order Form, including the GA 360 Services. |

| | |
|--------------------------------|---|
| Service Data | Data that is owned or managed by the Buyer and used for the G-Cloud Services, including backup data. |
| Service Definition(s) | The definition of the Supplier's G-Cloud Services provided as part of their Application that includes, but isn't limited to, those items listed in Section 2 (Services Offered) of the Framework Agreement. |
| Service Description | The description of the Supplier service offering as published on the Digital Marketplace. |
| Service Personal Data | The Personal Data supplied by a Buyer to the Supplier in the course of the use of the G-Cloud Services for purposes of or in connection with this Call-Off Contract. |
| Spend Controls | The approval process used by a central government Buyer if it needs to spend money on certain digital or technology services, see https://www.gov.uk/service-manual/agile-delivery/spend-controls-check-if-you-need-approval-to-spend-money-on-a-service |
| Start Date | The start date of this Call-Off Contract as set out in the Order Form. |
| Subcontract | Any contract or agreement or proposed agreement between the Supplier and a Subcontractor in which the Subcontractor agrees to provide to the Supplier the G-Cloud Services or any part thereof or facilities or goods and services necessary for the provision of the G-Cloud Services or any part thereof. |
| Subcontractor | Any third party engaged by the Supplier under a Subcontract (permitted under the Framework Agreement and the Call-Off Contract) and its servants or agents in connection with the provision of G-Cloud Services. |
| Subprocessor | Any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract. |
| Supplier Representative | The representative appointed by the Supplier from time to time in relation to the Call-Off Contract. |
| Supplier Staff | All persons employed by the Supplier together with the Supplier's servants, agents, suppliers and Subcontractors used in the performance of its obligations under this Call-Off Contract. |
| Supplier Terms | The relevant G-Cloud Service terms and conditions as set out in the Terms and Conditions document supplied as part of the Supplier's Application. |
| Term | The term of this Call-Off Contract as set out in the Order Form. |
| Variation | This has the meaning given to it in clause 32 (Variation process). |
| Working Days | Any day other than a Saturday, Sunday or public holiday in England and Wales. |

| | |
|------|------------------|
| Year | A contract year. |
|------|------------------|

Schedule 7 – GA 360 Services

1 Definitions and Interpretation

1.1 In this Agreement the following expressions have the following meanings:

“**Additional Service**” has the meaning given to it in Clause 4.2.

“**Affiliate**” has the meaning given to it in Annex 1.

“**Agreement**” means the completed Call-Off Contract which incorporates these terms and conditions and the terms at Annex 1.

“**Business Day**” means any day which is not a Saturday or Sunday or public holiday in England.

“**Client**” means the Buyer, as specified in the Order Form.

“**Client Policies**” means any standard Client policy, including, health and safety, fire, or security, provided to Merkle | Periscopix by the Client from time to time.

“**Contract Year**” means each period of twelve (12) months beginning on the commencement of the Order Form.

“**GA 360 Service**” has the meaning given to it in Annex 1.

“**Google**” means Google Ireland Limited, whose principal place of business is at Gordon House, Barrow Street, Dublin 4, Ireland.

“**Hit**” has the meaning given to it in Annex 1.

“**Initial Term**” means the ‘Initial term’ specified in the Order Form.

“**Intellectual Property Rights**” means copyrights (including copyright in computer software), database rights, rights in inventions, patent applications, patents, trade marks, trade names, know-how, service marks, design rights (whether registered or unregistered), trade secrets, rights in confidential information and all other industrial or intellectual property rights of whatever nature for the full duration of such rights, including any extensions or renewals.

“**Materials**” means all materials (including, documentation, reports, software, or website code) created by Merkle | Periscopix and provided to the Client as part of the GA 360 Service, Professional Services, and / or Additional Services, excluding such materials marked or otherwise identified as owned or licensed by any third party.

“**Merkle | Periscopix**” means Merkle UK Three Limited, a company incorporated under the laws of England (company number: 05134352), having its registered office at 10 Triton Street, Regents Place, London, NW1 3BF.

“**Order Form**” means the order form set out in Part A of the Call-Off Contract, for the provision of G-Cloud Services.

“**Professional Services**” means services such as consultancy, implementation, support, and / or training services to be provided by Merkle | Periscopix, as specified in the Order Form as ‘Professional Services’.

“**Scope Document**” has the meaning given to it in the Order Form;

“**Services Fees**” means the ‘services fees’ for each month calculated in accordance with the Order Form.

“**SOW Fees**” means, in respect of an Additional Service, the fees for that Additional Services as set out in the applicable Statement of Work.

“**Statement of Work**” has the meaning given to it in Clause 4.2.

“**Tag Container**” means website code through which the Client may serve multiple pieces of code (e.g., HTML) or web beacons (e.g., pixel tag, clear GIF) on one or more websites.

“**Website**” means each website specified under ‘Websites’ in the Order Form.

1.2 In this Agreement: (i) words in the singular include the plural and in the plural include the singular; (ii) Clause, Schedule, and Appendix headings shall not affect the interpretation of this Agreement; (iii) references to Clauses and Schedules are, unless otherwise provided, references to the Clauses of and the Schedules (including its appendices) to this Agreement; (iv) a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it; (v) a reference to “include” and “including” shall be interpreted to mean “including but not limited to”; and (vi) a reference to “specified in the Order Form” shall be interpreted to mean “specified in the Order Form (or specified in a document expressly referenced in the Order Form)”.

2 GA 360 SERVICE

2.1 Merkle | Periscopix shall provide the GA 360 Service in accordance with the terms of Annex 1, using reasonable care and skill, and subject to the terms of this Agreement.

2.2 The Client shall comply with any Google terms of use applicable to the receipt and / or use of the GA 360 Service.

2.3 If the Client’s use of the GA 360 Service reaches 20,000,000,000 Hits in a month, Merkle | Periscopix and / or Google has no obligation to provide the GA 360 Service to the Client for any additional Hits during that month.

2.4 The Client acknowledges that the GA 360 Service (and all service components within it) are: (i) standard services which are hosted

MERKLE | MERKLE | MERKLE | PERISCOPIX – GA 360 SERVICE

and operated by Google; and (ii) powered by software, hardware, and systems which by their very nature may not be free of bugs and errors. Merkle | Periscopix shall be entitled to make changes to the GA 360 Service to the extent that Google has made changes to its services, or particular components of its services, from time to time.

3 PROFESSIONAL SERVICES

- 3.1 Merkle | Periscopix shall provide the Professional Services using reasonable care and skill in accordance with the terms of this Agreement. The Professional Services shall be provided only in respect of the Websites.
- 3.2 The number of days in each month for which support services (which form part of the Professional Services) for the GA 360 Service will be provided are specified in the Order Form. The Client shall be entitled to bring forward or roll-over support services days into different months in accordance with the Scope Document. Any unused support services days are non-refundable and will be terminated at the end of the Contract Year.
- 3.3 Unless otherwise agreed by Merkle | Periscopix in writing, Merkle | Periscopix shall be entitled to charge the Client for any support services provided in a month in excess of the number of days for support services which the Client is entitled to under Clause 3.2 (such charges being at Merkle | Periscopix's standard rates).

4 ADDITIONAL SERVICES

- 4.1 Merkle | Periscopix shall provide Additional Services pursuant to Statement of Works using reasonable care and skill in accordance with the terms of this Agreement.
- 4.2 Merkle | Periscopix and the Client may from time to time agree that additional products and / or services will be provided by Merkle | Periscopix (each an "Additional Service"). Each Additional Service shall be agreed in writing (a "Statement of Work").
- 4.3 When a Statement of Work is signed by Merkle | Periscopix and the Client, that Statement of Work: (a) becomes binding; and (b) forms part of this Agreement. Each party shall comply with their respective obligations in each Statement of Work.

5 OUT OF SCOPE

- 5.1 Merkle | Periscopix shall not be responsible for confirming and / or testing the suitability of the Client's websites for use with the GA 360 Service.
- 5.2 The Client shall be responsible for satisfying itself that the GA 360 Service is suitable for its purposes and for use with and / or on the Client's websites; (ii) implementing the Tag Containers on the Client's websites; and (iii) serving the relevant pieces of code or web beacons to the Tag Containers in order to use the GA 360 Service. Merkle | Periscopix shall not be responsible for any adverse impact on the functionality and / or performance of the Client's websites, and / or loss of, or corruption to, the Client's data, caused by the provision or use of the GA 360 Service and / or Tag Containers.
- 5.3 Merkle | Periscopix shall not be responsible for the functionality and / or performance of any tag management system relating to, or used with, the Client's websites (and / or the platforms supported by any such system).

6 CLIENT RESPONSIBILITIES

- 6.1 The Client shall perform its obligations in this Agreement using reasonable care and skill.
- 6.2 The Client permits Merkle | Periscopix to access, monitor, use and disclose data within, or relating to, the Client's Account (as defined in Annex 1) for the purposes of providing the GA 360 Service.
- 6.3 Where reasonably required by Merkle | Periscopix for the provision of the services under this Agreement, the Client shall: (i) permit Merkle | Periscopix's staff access to its premises; (ii) provide Merkle | Periscopix with prompt cooperation and assistance; and (iii) make available to Merkle | Periscopix any and all required office, information, and telecommunications facilities.
- 6.4 Merkle | Periscopix shall not be responsible for any delay or failure in the performance of its obligations under this Agreement where such delay or failure is caused by: (i) any breach of the Client's obligations under this Agreement; and / or (ii) any delay or failure in the Client's provision of responses to requests for information or instructions by Merkle | Periscopix.
- 6.5 The Client shall provide Merkle | Periscopix with any Client Policies applicable to any Client premises in which Merkle | Periscopix is to perform the Professional Services and / or Additional Services.
- 6.6 The Client shall be responsible for keeping back-up copies of: (i) the data it uses on or in relation to the GA 360 Service; and (ii) the reports generated by the GA 360 Service.
- 6.7 Except as set out in this Clause 6.7, the Client shall not resell, distribute, lease, or allow another third party to use the GA 360 Service. Merkle | Periscopix agrees that the Client may allow a Subsidiary (as defined in Annex 1) to receive the GA 360 Service provided under this Agreement, in accordance with Annex 1.

7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 Risk in (and the responsibility to keep secure and insured) the Materials shall pass to the Client on delivery.
- 7.2 Nothing in this Agreement shall have the effect of transferring ownership of any Intellectual Property Rights from one party to the other.
- 7.3 Merkle | Periscopix owns all title to, and the Intellectual Property Rights, in the Materials and media on which the Materials are provided.
- 7.4 Merkle | Periscopix grants the Client a non-exclusive, non-transferable, and non-sublicensable licence to use the Materials solely for its own internal business purposes.

MERKLE | MERKLE | MERKLE | PERISCOPIX – GA 360 SERVICE

- 7.5 The Client shall not sell, transfer, sub-license, and / or disclose the Materials to any third party.
- 7.6 The Client owns all Intellectual Property Rights in materials (including documents) created by the Client.
- 7.7 The Client shall (and shall procure that its Affiliates, Subsidiaries, sub-contractors or agents) promptly enter into such documentation as is reasonably required by Merkle | Periscopix to vest ownership of Intellectual Property Rights in accordance with this Clause 7.

8 CLIENT INDEMNITY

- 8.1 The Client will indemnify, hold harmless and defend Merkle | Periscopix, Google and each of their Affiliates, at the Client's expense, from any and all third party claims, actions, proceedings, and suits brought against Merkle | Periscopix, Google, or any of their Affiliates, and all related liabilities, losses, damages, costs or expenses (including, without limitation, reasonable legal fees and other litigation expenses) incurred by Merkle | Periscopix, Google, or any of their Affiliates, arising out of or in relation to: (i) the Client's violations of applicable laws, rules or regulations in connection with the Client's use of the GA 360 Service, (ii) the Client's breach of Section 6 (Privacy) of Annex 1; and (iii) any third party claims in relation to the Client's brand features. In such a case, the relevant indemnified party will promptly notify the Client of the claim and cooperate with the Client in defending the claim. The Client will have full control and authority over the defence, except that: (a) any settlement requiring the indemnified party to admit liability or to pay any money will require that party's prior written consent, which may not be unreasonably withheld or delayed; and (b) the indemnified party may join in the defence with its own counsel at its own expense.

ANNEX 1 – GA 360 SERVICE

1. DEFINITIONS

In this Annex 1 (including Appendix A), the following expressions have the following meanings:

"Account" refers to the billing account for the GA 360 Service.

"Affiliate" in relation to a Party, a subsidiary of that Party, or the holding company of that Party (if any), or any other subsidiary of that holding company and for these purposes the terms "subsidiary" and "holding company" each have the meaning given to them in section 1159 of the Companies Act 2006.

"Beta Feature" means any GA 360 Service feature that is expressly identified as "Beta" or "Labs" or that is otherwise expressly identified as unsupported. Notwithstanding anything to the contrary in this Agreement, Merkle | Periscopix and / or Google will have no liability under this Agreement arising out of or related to any Beta Features.

"Client Data" means the data concerning the characteristics and activities of Visitors collected through use of an OSCI and then processed by the GA 360 Service.

"Documentation" means any accompanying documentation made available to Client by Google for use with the Processing Software, including any documentation available online.

"Downtime" means the applicable definition of downtime set forth below for each SLA, in each case, excluding (i) time resulting from technical malfunctions in the Mobile SDKs, in Client's website's systems, or any other circumstances beyond Merkle | Periscopix and / or Google's reasonable control (including, without limitation, Internet delays, network congestion and ISP malfunctions) and (ii) other than with respect to the Collection SLA, time required for routine system maintenance (with notice to Client, such as through in-product notifications) or customer initiated account upgrades.

"Deprecated Feature" means any GA 360 Service feature that has been documented as being deprecated in supporting documentation for the GA 360 Service, including in the Google Analytics Premium or Analytics 360 Help Center or the Google Analytics Developers site, or in the reporting interface for the GA 360 Service.

"GA 360 Service" means Google's Analytics 360 service, including the Software and Documentation.

"Hit" means the base unit that is sent to the Google Analytics system for processing. A Hit may be a call to the Google Analytics system by various libraries, including, Javascript (ga.js, urchin.js), Silverlight, Flash, and Mobile. A Hit may currently be a page view, a transaction, item, or event. Hits may also be delivered to the Google Analytics system without using one of the various libraries by other Google Analytics-supported protocols and mechanisms the GA 360 Service makes available to Client. Unless Google provides Client with prior written approval to the contrary, Client will not configure Client's Account to process more than 20 billion Hits per month across all Properties. For purposes of calculating this processing limit, each Roll-Up Hit will equal one-half of a Hit.

"Integration Feature" means any GA 360 Service feature that collects metrics by means other than through an OSCI, has an interface for displaying information collected via an OSCI that is separate from the GA 360 Service's or exports metrics to other Google or third party products or services. For purposes of clarification, Integration Features include any GA 360 Service feature that collects metrics from or exports metrics to other Google or third party products including AdWords, AdSense and Big Query.

"Mobile SDK" means a mobile operating system software development kit made available by Google that developers may use in an application to send Hits to the GA 360 Service. For purposes of clarification, a Mobile SDK is an OSCI.

"OSCI" means an "Officially Supported Client Interface", which is a mechanism made available by or supported by Google that can be used to send Hits to the GA 360 Service.

"Privacy Policy" means the privacy policy on a Property.

"Processing Software" means the Google Analytics server-side software and any upgrades, which analyses the Client Data and generates the Reports.

"Profile" means the collection of settings that together determine the information to be included in, or excluded from, a particular Report. For example, a Profile could be established to view a small portion of a web site as a unique Report. There can be multiple Profiles established under a single Property.

"Property" means any web page, application, or other property that uses an OSCI to send data to the GA 360 Service through Client's Account.

"Report" means the resulting analysis shown at www.google.com/analytics (or any other URL Google may provide from time to time) for a Profile.

"Roll-Up Hit" means a Hit received and processed by a Roll-Up Property.

"Roll-Up Property" means a set of one or more Properties designated by Client that combines the Hit-level data of those Properties for separate processing.

"SLA" means the GA 360 Service Level Agreement in Appendix A.

"Servers" means the servers controlled by Google (or its Affiliates) on which the Processing Software and Client Data are stored.

"Software" means the OSCI and Processing Software.

"Subsidiary" means a wholly owned subsidiary of Client.

"Third Party" means any third party (i) to which Client provides access to Client's Account or (i) for which Client uses the GA 360 Service to collect information on the third party's behalf. For clarity, a Subsidiary is a Third Party.

"Uptime Percentage" means the total number of minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month.

"Visitors" means visitors to Client's Properties.

2. USE OF SERVICE

2.1. USE OF SERVICE. Subject to the terms and conditions of this Agreement, Client (a) has a limited, revocable, non-exclusive, non-sublicensable (other than as expressly set forth in Section 2.3 of this Annex 1) licence to install, copy and use the OSCI solely as necessary for Client to use the GA 360 Service on Client's Properties or authorised Third Party's Properties and (b) Client may remotely access, view and download Client's Reports stored at <https://www.google.com/analytics>. Client will not (and Client will not allow any third party to) (i) copy, modify, adapt, translate or otherwise create derivative works of the Software or the Documentation, except as expressly permitted by the law in effect in the jurisdiction in which the Client is located; (ii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software, except as expressly permitted by the law in effect in the jurisdiction in which Client is located; (iii) rent, lease, sell, assign, sublicense (other than as expressly set forth in Section 2.3 of this Annex 1), distribute or otherwise transfer rights in or to the Software, the Documentation or the GA 360 Service; (iv) remove any proprietary notices or labels on the Software or placed by the GA 360 Service; (v) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the GA 360 Service or the Software; or (vi) use data labelled as belonging to a third party in the GA 360 Service for purposes other than generating, viewing, and downloading Reports.

2.2. RESTRICTIONS ON USE. Client will not use data labelled as belonging to a third party in the GA 360 Service for purposes other than generating, viewing, and downloading Reports. Client will comply with all applicable laws and regulations in Client's use of and access to the Documentation, Software, Service and Reports.

2.3. SUBSIDIARY USE. A Subsidiary may receive the GA 360 Service provided under this Agreement so long as such entity remains a wholly owned subsidiary of Client and provided that Client will be liable for the acts and omissions of such Subsidiary to the extent any of such Subsidiary's acts or omissions, if performed by Client, would constitute a breach of, or otherwise give rise to liability under, this Agreement.

2.4. SLAs AND SUPPORT. Merkle | Periscopix will provide the GA 360 Service and related support in accordance with the SLAs and support levels described in Appendix A to this Annex 1.

3. EFFECT OF TERMINATION

Upon any termination or expiration of this Agreement, the GA 360 Service shall cease to be provided. In the event of any such termination or expiration: (a) within a reasonable period after Client provides written notice to Merkle | Periscopix to delete Client Data, Merkle | Periscopix will render Client Data permanently inaccessible; (b) any continued Google Analytics use is subject to Google's then standard Google Analytics Terms of Service available at <https://www.google.com/analytics/tos.html> (or such other URL as Google may provide) as modified from time to time; and (d) for clarity, Client will not be permitted to export Client Data (except as the then-standard Google Analytics product permits).

4. DATA AND SECURITY

4.1. DATA. Client owns Client Data; provided that Google may only use and disclose Client Data (i) in accordance with the settings in Client's Account and the GA 360 Suite Home organisation (if any and as applicable), (ii) subject to the settings in Client's Account and the GA 360 Suite Home organisation (if any and as applicable), as service statistics, which will not include personally identifiable information or information that identifies or would reasonably be expected to identify Client, (iii) to provide the GA 360 Service and enforce its rights under this Agreement (it being understood and agreed that Client's non-aggregated data will not be used or disclosed to any third party by Google (except as otherwise expressly permitted by this Agreement) without Client's written consent) and (iv) if and as required by court order, law or governmental or regulatory agency (after, if permitted, giving reasonable notice to Client and using commercially

reasonable efforts to provide Client with the opportunity to seek a protective order or the equivalent (at Client's expense)); provided further, however, that with respect to data derived from Client's use of a Beta Feature, in addition to its rights set forth in the preceding proviso, Google may use and disclose such data, and all results and feedback from the Beta Feature, for any purpose as long as Google does not disclose results to third parties in such a manner as would identify or reasonably be expected to identify Client without Client's prior written consent.

4.2. ACCOUNT SECURITY. Client will protect Client's passwords and take full responsibility for Client's own, and third party, use of Client's Accounts. Client will notify Merkle | Periscopix and Google immediately upon learning of any unauthorised use of Client's Account or any other breach of security.

4.3. DATA SECURITY. Merkle | Periscopix will (i) use current industry-standard security measures in connection with its provision of the GA 360 Service and (ii) promptly notify Client of any breach of such security resulting in unauthorised access to Client Data, after becoming aware of such breach.

4.4. THIRD PARTIES. If Client uses the GA 360 Service on behalf of a Third Party or a Third Party otherwise uses the GA 360 Service through Client's Account, whether or not Client is authorized by Google to do so, then Client represents and warrants that (a) Client is authorised to act on behalf of, and bind to this Agreement, the Third Party to all obligations that Client has under this Agreement, (b) Google may share with the Third Party any Client Data that is specific to the Third Party's Properties, and (c) Client will not disclose Third Party's Client Data to any other party without the Third Party's consent. For clarity, only Subsidiaries are authorised Third Parties under this Agreement.

4.5. GOOGLE ANALYTICS 360 SUITE HOME. Client's use of the Google Analytics 360 Suite user interface through which Client can access certain suite-level services and functionality (the "**GA 360 Suite Home**") is governed by the Google Analytics 360 Suite Home Terms of Service (or as subsequently renamed) available at <https://360suite.google.com/terms> (or such other URL as Google may provide) as modified from time to time (the "**Suite Home Terms**"), but subject to Section 2 of the Suite Home Terms, use of the GA 360 Service will continue to be governed by this Agreement.

5. GOOGLE CONFIDENTIAL INFORMATION

The Client will: (a) protect any of Google's Confidential Information that it may obtain from its use of the GA 360 Service ("**Google's Confidential Information**") with the same standard of care it uses to protect its own Confidential Information (but in no event less than a reasonable standard of care); and (b) not disclose Google's Confidential Information, except to Affiliates, employees and agents who need to know it and who have agreed in writing to keep it confidential. The Client (and any Affiliates, employees and agents to whom it has disclosed Google's Confidential Information) may use Google's Confidential Information only to its exercise rights and fulfil obligations under the Agreement. The Client is responsible for any actions of its Affiliates, employees and agents in violation of this Section 5. Upon termination of this Agreement, the Client will promptly either return or destroy all Google's Confidential Information and, upon request, provide written certification of compliance with this Section 5.

6. PRIVACY

Client will not, and will not assist or permit any third party to, pass information to Merkle | Periscopix and / or Google that Merkle | Periscopix and / or Google could use or recognise as personally identifiable information. Client will have and abide by an appropriate Privacy Policy and will comply with all applicable laws and regulations relating to the collection of information from Visitors. Client must post a Privacy Policy and that Privacy Policy must provide notice of Client's use of cookies that are used to collect traffic data, and Client must not circumvent any privacy features (e.g., an opt-out) that are part of the GA 360 Service. Client will use commercially reasonable efforts to ensure that a Visitor is provided with clear and comprehensive information about, and consents to, the storing and accessing of cookies or other information on the Visitor's device where such activity occurs in connection with the GA 360 Service and where providing such information and obtaining such consent is required by law.

Client's use of the GA 360 Service is subject to the applicable Google Analytics Policies available at <https://www.google.com/analytics/policies> (or such other URL as Google may provide) as modified from time to time.

7. PROPRIETARY RIGHTS

The GA 360 Service, including all associated Intellectual Property Rights is, and will remain, the property of Google (and its Affiliates). All rights in the GA 360 Service not expressly granted to Client in this Annex 1 are expressly reserved and retained by Google and its licensors without restriction, including, Google's (and its Affiliates') right to sole ownership of the GA 360 Service. For the avoidance of doubt, Google owns all rights, title and interest in the decision tools, formulae, metrics, ratings, scores, tracking methodologies and data provided by Google to generate the Reports and/or provide the GA 360 Service, including data generated pursuant to Section 4.1 of this Annex 1. For example, Client will not (and will not allow any third party to): (a) use the trademarks, trade names, service marks, logos, domain names and other distinctive brand features or any copyright or other proprietary rights associated with the GA 360 Service for any purpose without the express written consent of Google; (b) register, attempt to register, or assist anyone else to register any

trademark, trade name, service marks, logos, domain names and other distinctive brand features, copyright or other proprietary rights associated with Google (or its Affiliates) other than in the name of Google (or its Affiliates, as the case may be); (c) remove, obscure, or alter any notice of copyright, trademark, or other proprietary right appearing in or on any item included with the GA 360 Service; or (d) seek, in a proceeding filed during the term of this Agreement or for one year after such term, an injunction of any portion of the GA 360 Service based on patent infringement.

Client is not required to provide Feedback; however, if Client provides any materials, feedback, requests, questions, comments, test results or ideas to Google regarding the GA 360 Service, including suggesting or recommending changes, features, functionality or improvements to the GA 360 Service ("**Feedback**"), then Google may use the Feedback for any purposes without obligation or compensation to Client. Client grants to Google and its affiliates and successors a paid-up, royalty-free, irrevocable, perpetual, non-exclusive, sublicensable, transferable, worldwide license to make, use, sell, offer for sale, import, export the whole or a component of, copy, distribute, modify, create derivative works based on, publicly perform, publicly display, and otherwise exploit the Feedback for any purpose; provided, however, that Google does not disclose Feedback to third parties in a manner that would identify or reasonably be expected to identify Client without Client's prior written consent.

8. GOOGLE COMMUNICATIONS

The Client agrees that Google may send the Client communications and requests about the GA 360 Service (e.g., giving service updates and information, requesting customer feedback, and surveys to improve services or gauge satisfaction).

9. U.S. GOVERNMENT RIGHTS

If the use of the GA 360 Service is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense (DOD) acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions), the Government's rights in the Software, including its rights to use, modify, reproduce, release, perform, display or disclose the Software or Documentation, will be subject in all respects to the commercial license rights and restrictions provided in this Agreement.

10. MODIFICATIONS TO POLICIES

Google may modify any policies that apply to the GA 360 Service to, for example, reflect changes to the law or changes to the GA 360 Service. Client should look at the policies regularly. Google will post notice of the modifications to these policies at the applicable URL for such policies. Changes will not apply retroactively and will become effective no sooner than 14 days after they are posted.

11. INTERPRETATION OF CONFLICTING TERMS

If there is a conflict between this Annex 1 and the terms located at any URL, the documents will control in the following order: first, this Annex 1, and then second, the terms located at any URL.

APPENDIX A: SLAs and CUSTOMER SUPPORT

SERVICE LEVEL AGREEMENTS

Merkle | Periscopix will use commercially reasonable efforts to ensure that the GA 360 Service meets the service levels indicated below (collectively, the "SLAs"). If Merkle | Periscopix fails to meet the SLAs in any calendar month, and if Client meets Client's obligations under the SLAs, Client will be eligible to receive credit in an amount equal to monthly Services Fees paid by Client for the calendar months during which Merkle | Periscopix failed to meet the applicable SLAs ("Credit"). In order to receive such Credit, Client must notify Merkle | Periscopix within 21 days from the time Client becomes eligible to receive such Credit. Failure to comply with this requirement will forfeit Client's right to such Credit. Credit will be issued as a credit memo for the affected invoice (which Client may apply to its following monthly invoice). For purposes of the Data Processing SLA, Merkle | Periscopix may, in lieu of providing the Credit pursuant to the terms of these SLAs, elect to re-process or restore applicable Client Data, in which case Client will no longer be eligible for such Credit. The maximum Credit that Client may be eligible for in the aggregate in any given calendar month is 100% of monthly Services Fees. If Merkle | Periscopix fails to meet any of the SLAs in any 3 consecutive months or in any 4 months in any 12-consecutive month period, Client will have a one-time right to terminate the GA 360 Service upon prior written notice to Merkle | Periscopix, subject to such notice being received by Merkle | Periscopix within 21 days of the end of the month in which Client becomes eligible for such right of termination. The remedies set forth in these SLAs are Client's sole and exclusive remedies for any failure by Merkle | Periscopix or Google to meet the SLAs.

| <u>SLAs</u> | <u>Downtime</u> |
|---|---|
| <p><u>Collection SLA</u></p> <p>Analytics 360 Service collects Client Data from Properties at an Uptime Percentage of at least 99.9%.</p> | <p>Periods during which time the collection component of the Analytics 360 Service is generally unavailable to Google's customers.</p> |
| <p><u>Reporting SLA</u></p> <p>The reporting interface for the Analytics 360 Service is available for Client's use at an Uptime Percentage of least 99%.</p> | <p>Periods of more than 5 minutes during which time the Client is unable to log-in to the Analytics 360 Service interface.</p> |
| <p><u>Data Processing SLA</u></p> <p>Except as set forth in the Data Processing SLA Exceptions article available at https://support.google.com/analytics/answer/6223844?hl=en&ref_to</p> | <p>Periods of processing delay during which time the Analytics 360 Service takes longer than the applicable timeframe set forth in the Data</p> |

| | |
|---|---|
| <p>pic=2430414 (or such other URL as Google may provide) as modified from time to time at Google's sole discretion, the Analytics 360 Service processes collected Client Data (1) within 4 hours of receipt at an Uptime Percentage of at least 98% for Properties that receive fewer than or equal to 2 billion Hits per calendar month and (2) within 24 hours of midnight (Pacific Time) at an Uptime Percentage of 98% of the time for Properties that receive more than 2 billion Hits per calendar month.</p> | <p>Processing SLA to process collected Client Data.</p> |
|---|---|

The SLAs apply solely to Client Data collected directly through the then-current version(s) of OSCI (which, for the avoidance of doubt, excludes all Deprecated Features) and do not apply to any Client Data collected, processed or reported through the use of Integration Features. The Reporting SLA does not apply to reporting on non-web based Google Analytics reporting UIs. The Collection SLA and Data Processing SLA only apply to the extent Client sends data in accordance with the guidelines available at <https://developers.google.com/analytics/> (or such other URL as Google may provide) as modified from time to time at Google's sole discretion.

SLA EXCLUSIONS AND LIMITS

Notwithstanding anything to the contrary in this Agreement, Merkle | Periscopix and Google will have no liability (including in respect of indemnification obligations or SLA obligations) under this Agreement arising out of or related to any Beta Features or Integration Features. The maximum SLA remedy for any individual month is 100% of the Services Fees incurred by Client under this Agreement for that month.

INSTALLATION SUPPORT

Merkle | Periscopix will provide commercially reasonable initial and ongoing implementation guidance for the GA 360 Service for the Website. With respect to Mobile SDKs, any implementation support provided by Merkle | Periscopix will be limited to: (i) the then-current Mobile SDK and (ii) for a period of 6 months after the release date of the then-current Mobile SDK, the version of the Mobile SDK that immediately preceded the then-current Mobile SDK.

ON-GOING SUPPORT

Merkle | Periscopix will use commercially reasonable efforts to meet the target response and resolution timeframes set forth at <https://support.google.com/analytics/answer/6215195> (or such other URL as Google may provide) as modified from time to time at Google's sole discretion. The priority level of support cases logged by Client will initially be designated by Client, in its reasonable discretion based on the descriptions in the table at the link above. Merkle | Periscopix customer support ("**Merkle | Periscopix Customer Support**") may lower the priority level designation of any case (a "**Priority Adjustment**") if Merkle | Periscopix, in its

reasonable discretion, believes that Client's initial priority designation does not comport with the descriptions in the table. Merkle | Periscopix Customer Support will notify Client as soon as is reasonably practicable of any Priority Adjustment. Merkle | Periscopix Customer Support may also perform a Priority Adjustment while permanent solutions are being developed, as soon as a workaround solution is implemented.

With respect to Mobile SDKs, on-going support provided by Merkle | Periscopix will be limited to: (i) the then-current Mobile SDK and (ii) for a period of 6 months after the release date of the then-current Mobile SDK, the version of the Mobile SDK that immediately preceded the then-current Mobile SDK.

Target resolution times are goals. Depending on the volume and severity of tickets submitted, response times and time to resolution may vary. Occasionally an issue needs to be escalated to Merkle | Periscopix's and / or Google's engineering team. In such cases, it may take more time to resolve the issue. Client's customer support representative will keep Client informed throughout the process.

Schedule 8 – Particulars of Processing

Subject Matter

The Supplier's provision of the Services and any related technical support to the Buyer.

Duration of the Processing

The term of the Agreement plus the period from expiry of such until deletion of all Buyer Personal Data by the Supplier in accordance with these terms.

Nature and Purpose of the Processing

The Supplier will provide some or all of the following activities in respect of the Buyer Personal Data, for the purpose of providing the Services and any related technical support to the Buyer in accordance with these terms: processing, collecting, recording, organising, structuring, storing, adapting or altering, retrieving, consulting, using, disclosing by transmission, disseminating or otherwise making available, aligning or combining, restricting, erasing or destroying.

The Buyer confirms that it uses automated decision-making and profiling to better understand its customer base as well as determining relevant offers, news and advertisements for its customers for marketing and customer service purposes. The Buyer is of the view that it does not believe the output decision produces:

- (i) legal effects; or
- (ii) similarly significantly affects the individuals,

and shall notify the the Supplier immediately if this view changes.

Types of Personal Data

The subject matter of the processing of Buyer Personal Data comprises the following data types/categories:

Special categories of data pursuant to Article 9(1) of GDPR

Race, ethnic origin, politics, religion, trade union membership, genetics, biometrics (where used for ID purposes), health, sex life, or sexual orientation.

Browsing information

Any behaviour or action observed or recorded regarding an individual's interactions with or use of any online resource including but not limited to website analytics, use of social media, use of accounts websites visited, time spent on website, unique identifiers such as cookies or IP address

Contact information

Any information allowing direct outbound contact to be made with an individual such as name, address, telephone numbers, email addresses, social media identifiers

Financial information

Buyer or 3rd party data or opinions relating to income, wealth or assets, debts, liquidity or financial transactions or outgoings

Government identifiers

Government issued reference numbers such as National Insurance number, Passport number, Driving Licence number

Social media information

Information gleaned from social media sites such as social login data and conversions

Travel and expense

Location information that can be derived from travel booking

User account information

User account information such as user login, user settings, user change history

Other (please specify)

For Google's advertising and measurement products, the Buyer Personal Data may include the types of personal data described at privacy.google.com/businesses/adsservices. Other types of personal data may also be processed within those products, provided the following policy is complied with <https://support.google.com/analytics/answer/7686480>.

Categories of Data Subjects

Buyer Personal Data will concern the following categories of data subjects:

- data subjects about whom the Supplier collects personal data in its provision of the Services; and/or
- data subjects about whom personal data is transferred to the Supplier in connection with the Services by, at the direction of, or on behalf of the Buyer.

Depending on the nature of the Services, these data subjects may include individuals: (a) to whom online advertising has been, or will be, directed; (b) who have visited specific websites or applications in respect of which the Supplier provides the Services; and/or (c) who are customers or users of the Buyer's products or services.

Specific Restrictions

The processing of the Buyer Personal Data shall be subject to the restrictions described in the Agreement and/or these terms. If there is any conflict or inconsistency between the Agreement and these terms, the terms of these terms shall prevail to the extent of any conflict or inconsistency.

Data Protection Officer

Dr Simon Rice
DPO@merkleinc.com
10 Triton Street, Regents Place, London, United Kingdom, NW1 3BF

Permitted Subprocessors

| Name | Services | Location/Transfers | Mechanism |
|---|---|--|---|
| <p>Google Analytics (360)</p> <p>Google LLC 1600 Amphitheatre Parkway Mountain View CA 94043 United States</p> | <p>Google is a full stack digital services company. The Google Analytics (360) platform is a web analytics service that reports on how users reach and interact with a website or application.</p> <p>If the features are activated, the platform can also be used to generate audiences for Google's advertising platforms (AdWords, DoubleClick) and website optimisation tool (Optimize). Activation of these features will also surface aggregated demographic data gathered from Google services within Google Analytics (360).</p> <p>Google can also facilitate the transfer of personal data from Google Analytics (360) to its Analytics Data Warehouse (BigQuery) on the Google Cloud Platform (GCP). This processing activity is only available within the 360 version of the product.</p> <p>Buyer personal data is collected through <u>HTTP requests to the Google servers</u>. Google have summarised the types of personal data they process here: https://privacy.google.com/businesses/adsservices/</p> <p>The Buyer may also pass custom data into Google Analytics (360), provided it complies with the following policy which does allow for additional personal data to be sent: https://support.google.com/analytics/answer/7686480</p> <p>Personal data is also processed for the purpose of controlling access to the platform.</p> | <p>Google may store and process Buyer Personal Data in the United States of America and any other country in which Google or any of its Subprocessors maintains facilities.</p> <p>Google will ensure that:</p> <p>(a) the parent company of the Google group, Google LLC, remains self-certified under Privacy Shield on behalf of itself and its wholly-owned U.S. subsidiaries; and</p> <p>(b) the scope of Google LLC's Privacy Shield certification includes Buyer Personal Data.</p> <p>Information about the locations of Google data centres is available at www.google.com/about/datacenters/inside/locations/index.html.</p> | <p><input checked="" type="checkbox"/> Transfer is to a country, a territory or one or more specified sectors in that country, or to an international organisation that the EU Commission has deemed adequate</p> <p><input type="checkbox"/> Binding corporate rules (Art 47 GDPR) apply</p> <p><input type="checkbox"/> Standard data protection clauses (Art 46(2)(c) or (d) GDPR) apply</p> |

| Name | Services | Location/Transfers | Mechanism |
|---|---|--|---|
| <p>Google Tag Manager (360)</p> <p>Google LLC 1600 Amphitheatre Parkway Mountain View CA 94043 United States</p> | <p>Google is a full stack digital services company. The Google Tag Manager (360) platform is a Tag Management System (TMS) that enables the Buyer to deploy marketing tags on a website or application from a centralised repository, based on logic-based rules.</p> <p>Google have summarised the types of personal data they process here: https://privacy.google.com/businesses/adsservices/</p> <p>However, the solution does not surface this data in any way to the TMS users, neither via the user interface nor the Application Programming Interface (API). TMS users may only view and edit tagging configuration data. The configuration of these tags may influence how personal data is sent to other platforms.</p> <p>Personal data is also processed for the purpose of controlling access to the platform.</p> | <p>Google may store and process Buyer Personal Data in the United States of America and any other country in which Google or any of its Subprocessors maintains facilities.</p> <p>Google will ensure that:</p> <p>(a) the parent company of the Google group, Google LLC, remains self-certified under Privacy Shield on behalf of itself and its wholly-owned U.S. subsidiaries; and</p> <p>(b) the scope of Google LLC's Privacy Shield certification includes Buyer Personal Data.</p> <p>Information about the locations of Google data centres is available at www.google.com/about/datacenters/inside/locations/index.html.</p> | <p><input checked="" type="checkbox"/> Transfer is to a country, a territory or one or more specified sectors in that country, or to an international organisation that the EU Commission has deemed adequate</p> <p><input type="checkbox"/> Binding corporate rules (Art 47 GDPR) apply</p> <p><input type="checkbox"/> Standard data protection clauses (Art 46(2)(c) or (d) GDPR) apply</p> |

Permitted 3rd Party Transfers

The Buyer warrants that it has (or is currently in the process of negotiating) a robust data sharing contract in place with the recipients of data listed in the table below and that the Supplier is (or will be) lawfully entitled to access the Buyer Personal Data for the purposes of providing the Services to the Buyer. The parties further agree that, notwithstanding any other term in the Agreement the supplier will not be liable for the Buyer Personal Data and any access to such Buyer Personal Data by the Supplier shall be at the the Buyer's sole risk.

| Name | | Location/Transfers | Mechanism |
|------|--|--------------------|-----------|
|------|--|--------------------|-----------|

| | | | |
|---|---|--|---|
| <p>Google Analytics</p> <p>Google LLC</p> <p>1600 Amphitheatre Parkway</p> <p>Mountain View</p> <p>CA 94043</p> | <p>Google is a full stack digital services company. The Google Analytics platform is a web analytics service that reports on how users reach and interact with a website or application.</p> <p>If the features are activated, the platform can also be used to generate audiences for Google’s advertising platforms (Google Ads). Activation of these features will also surface aggregated demographic data gathered from Google services within Google Analytics.</p> <p>Buyer personal data is collected through <u>HTTP requests to the Google servers</u>. Google have summarised the types of personal data they process here: <u>https://privacy.google.com/businesses/adsservices/</u></p> <p>Personal data is also processed for the purpose of controlling access to the platform.</p> | <p>Google may store and process Buyer Personal Data in the United States of America and any other country in which Google or any of its Subprocessors maintains facilities.</p> <p>Google will ensure that:</p> <p>(a) the parent company of the Google group, Google LLC, remains self-certified under Privacy Shield on behalf of itself and its wholly-owned U.S. subsidiaries; and</p> <p>(b) the scope of Google LLC’s Privacy Shield certification includes Buyer Personal Data.</p> <p>Information about the locations of Google data centres is available at <u>www.google.com/about/datacenters/inside/locations/index.html</u></p> | <p><input checked="" type="checkbox"/> Transfer is to a country, a territory or one or more specified sectors in that country, or to an international organisation that the EU Commission has deemed adequate</p> <p><input type="checkbox"/> Binding corporate rules (Art 47 GDPR) apply</p> <p><input type="checkbox"/> Standard data protection clauses (Art 46(2)(c) or (d) GDPR) apply</p> |
|---|---|--|---|

