



G-Cloud 11 Call-Off Contract for the supply of two zScan licences for use by NHSX on the NHS proximity application.

Contents

G-Cloud 11 Call-Off Contract (version 4)	1
Part A - Order Form	5
Principle contact details	6
Call-Off Contract term	6
Buyer contractual details	7
Supplier's information	8
Call-Off Contract charges and payment	8
Additional Buyer terms	9
Schedule 1 - Services	10
Schedule 2 - Call-Off Contract charges	10
Part B - Terms and conditions	11
1. Call-Off Contract start date and length	11
2. Incorporation of terms	12
3. Supply of services	13
4. Supplier staff	13
5. Due diligence	14
6. Business continuity and disaster recovery	14
7. Payment, VAT and Call-Off Contract charges	14
8. Recovery of sums due and right of set-off	15
9. Insurance	16

10. Confidentiality	17
11. Intellectual Property Rights	17
12. Protection of information	18
13. Buyer data	19
14. Standards and quality	20
15. Open source	20
16. Security	21
17. Guarantee	21
18. Ending the Call-Off Contract	22
19. Consequences of suspension, ending and expiry	23
20. Notices	24
21. Exit plan	24
22. Handover to replacement supplier	26
23. Force majeure	26
24. Liability	26
25. Premises	27
26. Equipment	27
27. The Contracts (Rights of Third Parties) Act 1999	27
28. Environmental requirements	28
29. The Employment Regulations (TUPE)	28
30. Additional G-Cloud services	29
31. Collaboration	30
32. Variation process	30
33. Data Protection Legislation (GDPR)	30
Schedule 3 - Collaboration agreement	30
1. Definitions and interpretation	Error! Bookmark not defined.
2. Term of the agreement	Error! Bookmark not defined.
3. Provision of the collaboration plan	Error! Bookmark not defined.
4. Collaboration activities	Error! Bookmark not defined.
5. Invoicing	Error! Bookmark not defined.
6. Confidentiality	Error! Bookmark not defined.
7. Warranties	Error! Bookmark not defined.
8. Limitation of liability	Error! Bookmark not defined.
9. Dispute resolution process	Error! Bookmark not defined.
10. Termination and consequences of termination	Error! Bookmark not defined.

10.1	Termination	Error! Bookmark not defined.
10.2	Consequences of termination	Error! Bookmark not defined.
11.	General provisions	Error! Bookmark not defined.
11.1	Force majeure	Error! Bookmark not defined.
11.2	Assignment and subcontracting.....	Error! Bookmark not defined.
11.3	Notices	Error! Bookmark not defined.
11.4	Entire agreement.....	Error! Bookmark not defined.
11.5	Rights of third parties.....	Error! Bookmark not defined.
11.6	Severability	Error! Bookmark not defined.
11.7	Variations	Error! Bookmark not defined.
11.8	No waiver	Error! Bookmark not defined.
11.9	Governing law and jurisdiction.....	Error! Bookmark not defined.
	Collaboration Agreement Schedule 1 - List of contracts	Error! Bookmark not defined.
	[Collaboration Agreement Schedule 2 - Outline collaboration plan]	Error! Bookmark not defined.
	Schedule 4 - Alternative clauses	30
	1. Introduction.....	Error! Bookmark not defined.
	2. Clauses selected	Error! Bookmark not defined.
2.3	Discrimination	Error! Bookmark not defined.
2.4	Equality policies and practices.....	Error! Bookmark not defined.
2.5	Equality.....	Error! Bookmark not defined.
2.6	Health and safety.....	Error! Bookmark not defined.
2.7	Criminal damage.....	Error! Bookmark not defined.
	Schedule 5 - Guarantee	Error! Bookmark not defined.
	Definitions and interpretation.....	Error! Bookmark not defined.
	Guarantee and indemnity.....	Error! Bookmark not defined.
	Obligation to enter into a new contract	Error! Bookmark not defined.
	Demands and notices	Error! Bookmark not defined.
	Beneficiary's protections.....	Error! Bookmark not defined.
	Representations and warranties	Error! Bookmark not defined.
	Payments and set-off	Error! Bookmark not defined.
	Guarantor's acknowledgement	Error! Bookmark not defined.
	Assignment.....	Error! Bookmark not defined.
	Severance.....	Error! Bookmark not defined.
	Third-party rights.....	Error! Bookmark not defined.
	Governing law.....	Error! Bookmark not defined.

Schedule 6 - Glossary and interpretations	31
Schedule 7 - GDPR Information	38
Annex 1 - Processing Personal Data	Error! Bookmark not defined.

Part A - Order Form


Digital Marketplace service ID number:	7941 5760 1008 804
Call-Off Contract reference:	As above
Call-Off Contract title:	Contract for zSCAN licenses
Call-Off Contract description:	12 month cloud software service license, for the use of the Zimperium Inc. zSCAN application by NHSX and their delivery partner during application development.
Start date:	31/03/2020
Expiry date:	30/03/2021
Call-Off Contract value:	£43,000 ex VAT £51,600 inc VAT. Product pricing is in \$ USD, actual £ GBP cost to be confirmed at point of payment is made to the provider, Zimperium Inc. by the Supplier.
Charging method:	Purchase of software in accordance with the pricing card on the G-Cloud Service Listing
Purchase order number:	TBC on award

This Order Form is issued under the G-Cloud 11 Framework Agreement (RM1557.11).

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	<p>The Secretary of State for Health and Social Care acting as part of the Crown through the Department of Health and Social Care</p> <p></p> <p>Buyer's main address: 39 Victoria Street Westminster</p>
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	London SW1H 0EU
To: the Supplier	Nine23 Ltd +44 (0) 23 8202 0300 Supplier's address: 4 Benham Road Southampton Science Park Chilworth Southampton SO16 7QJ Company number: 08118696
Together: the 'Parties'	

Principle contact details

For the Buyer:	Title: [REDACTED] Name: [REDACTED] Email: [REDACTED] Phone: [REDACTED]
For the Supplier:	Title: [REDACTED] Name: [REDACTED] Email: [REDACTED] Phone: [REDACTED]

Call-Off Contract term

Start date:	This Call-Off Contract Starts on 31/03/2020 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 undisputed 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(s) of 12 months each, by giving the Supplier 1 month's written notice before its expiry. Any extension is to be supported by completion of the necessary Departmental approvals process. 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.
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Buyer contractual details

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

G-Cloud lot:	This Call-Off Contract is for the provision of Services under: Lot 2 - Cloud software
G-Cloud services required:	The Services to be provided by the Supplier under the above Lot are listed in Framework Section 2 and outlined below: Mobile Threat Defence (MTD) - App Vetting Service - zSCANS [REDACTED] This statement does not constitute a guarantee of order volumes. Licenses should be issued in the name of NHSX and be for their and their application delivery partner's use.
Additional Services:	N/A
Location:	The Services will be delivered to: License detail and access instructions, once confirmed, should be issued to: [REDACTED] and cc ing [REDACTED]
Quality standards:	The quality standards required for this Call-Off Contract are as detailed on the G-Cloud Service Listing page under service offering ID: [REDACTED]
Technical standards:	The technical standards required for this Call-Off Contract are as detailed on the G-Cloud Service Listing page under service offering ID: [REDACTED]
Service level agreement:	The service level and availability criteria required for this Call-Off Contract are as detailed on the G-Cloud Service Listing page under service offering ID: 7941 5760 1008 804.
Onboarding:	The onboarding plan for this Call-Off Contract is as detailed in the applicable Service Description for the G-Cloud Service Listing ID: 7941 5760 1008 804.
Offboarding:	The offboarding plan for this Call-Off Contract is as detailed in the applicable Service Description for the G-Cloud Service Listing ID: 7941 5760 1008 804.
Collaboration agreement:	N/A
Limit on Parties' liability:	The annual total liability of either Party for all Property defaults will not exceed [REDACTED] The annual total liability for Buyer Data defaults will not exceed 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term.

	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.
Insurance:	The insurance(s) required will be: <ul style="list-style-type: none"> • a minimum insurance period of 6 years following the expiration or Ending of this Call-Off Contract] • professional indemnity insurance cover to be held by the Supplier and by any agent, Subcontractor or consultant involved in the supply of the G-Cloud Services. This professional indemnity insurance cover will have a minimum limit of indemnity of £1,000,000 for each individual claim or any higher limit the Buyer requires (and as required by Law) • employers' liability insurance with a minimum limit of £5,000,000 or any higher minimum limit required by Law
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 30 consecutive days.
Audit:	Standard audit provisions included as per the Framework terms and conditions.
Buyer's responsibilities:	The Buyer is responsible for ensuring the supplier has the access required to deliver the services under this agreement.
Buyer's equipment:	The Buyer's equipment to be used with this Call-Off Contract includes any that may be required in the process of providing the services. All buyer's equipment to be used must be agreed with the buyer before use and on an as needed basis.

Supplier's information

Subcontractors or partners:	The following is a list of the Supplier's Subcontractors or Partners – [REDACTED]
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Call-Off Contract charges and payment

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

Payment method:	The payment method for this Call-Off Contract is BACS following approval of a valid invoice submitted by the supplier
Payment profile:	The payment profile for this Call-Off Contract is agreed as being within three days of supply.
Invoice details:	The Supplier will issue electronic invoices for the requested licenses at contract signature. The Buyer will pay the Supplier when in receipt of a valid invoice.
Who and where to send invoices to:	Invoices will be sent to: [REDACTED]

	<p>[REDACTED]</p> <p>Accounts Payable 1st Floor 39 Victoria Street London SW1H 0EU.</p>
Invoice information required – for example purchase order, project reference:	All invoices must include the purchase order number (TBC)
Invoice frequency:	Invoice will be sent to the Buyer upon order of licenses
Call-Off Contract value:	The total value of this Call-Off Contract is £43,000 ex VAT £51,600 inc VAT. Product pricing is in \$ USD, actual £ GBP cost to be confirmed at point of payment is made to the provider, Zimperium Inc. by the Supplier.
Call-Off Contract charges:	<p>The breakdown of the Charges is:</p> <ul style="list-style-type: none"> • [REDACTED] ex VAT

Additional Buyer terms

Performance of the service and deliverables:	N/A
Guarantee:	N/A
Warranties, representations:	N/A
Supplemental requirements in addition to the Call-Off terms:	N/A
Alternative clauses:	N/A
Buyer specific amendments to/refinements of the Call-Off Contract terms:	N/A
Public Services Network (PSN):	N/A
Personal Data and Data Subjects:	N/A

1. Formation of contract

- 1.1 By signing and returning this Order Form (Part A), the Supplier agrees to enter into a Call-Off Contract with the Buyer.
- 1.2 The Parties agree that they have read the Order Form (Part A) and the Call-Off Contract

terms and by signing below agree to be bound by this Call-Off Contract.

- 1.3 This Call-Off Contract will be formed when the Buyer acknowledges receipt of the signed copy of the Order Form from the Supplier.
- 1.4 In cases of any ambiguity or conflict the terms and conditions of the Call-Off Contract 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 RM1557.11.
- (B) The Buyer provided an Order Form for Services to the Supplier.

Signed:	Supplier	Buyer	
Name:	[REDACTED]	[REDACTED]	
Title:	[REDACTED]	[REDACTED]	
Signature:	[REDACTED]	[REDACTED]	
Date:	31/03/2020	31/01/2020	04/04/2020 [REDACTED]

Schedule 1 - Services

The contract will be for Software as a Service licenses for the Mobile Threat Defence (MTD) - App Vetting Service zScans-ENT.

zScan supports mobile app developers identify reputation and financial risks by automatically identifying privacy, security and compliance risks in the development process before apps are released to the public.

Use of the zScan software to be in accordance with Zimperium Inc.'s End User License Agreement, see appendix A.

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:

- The purchase of enterprise licenses for both iOS and Android applications. Full details of the Charges and pricing structure can be found on the G-Cloud Service Listing page. For reference, the pricing table can be found below.
 - ██████ zScan – Enterprise at ██████ ex VAT each – Total £43,000 ex VAT

Cloud Software			
Ref	Description	Price (FROM) Capex	Price (FROM) License(s)
CS1	████████████████████	Setup as per SFIA	████████████████
CS2	████████████████████	Setup as per SFIA	████████████████
CS3	████████████████████	Setup as per SFIA	████████████████
CS4	████████████████████	Setup as per SFIA	████████████████
CS5	████████████████████	Setup as per SFIA	████████████████
CS6	████████████████████	Setup as per SFIA	████████████████
CS8	████████████████████	Setup as per SFIA	████████████████
	████████████████████		████████████████
CS9	████████████████████	Setup as per SFIA	████████████████

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)
- 5.4 to 5.5 (Force majeure)
- 5.8 (Continuing rights)
- 5.9 to 5.11 (Change of control)
- 5.12 (Fraud)
- 5.13 (Notice of fraud)
- 7.1 to 7.2 (Transparency)
- 8.3 (Order of precedence)
- 8.4 (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)
- 8.42 to 8.48 (Conflicts of interest and ethical walls)
- 8.49 to 8.51 (Publicity and branding)
- 8.52 to 8.54 (Equality and diversity)
- 8.57 to 8.58 (data protection)
- 8.62 to 8.63 (Severability)
- 8.64 to 8.77 (Managing disputes and Mediation)
- 8.78 to 8.86 (Confidentiality)
- 8.87 to 8.88 (Waiver and cumulative remedies)
- 8.89 to 8.99 (Corporate Social Responsibility)
- 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 Parties acknowledge that they are required to complete the applicable Annexes contained in schedule 4 (Processing Data) of the Framework Agreement for the purposes of this Call-Off Contract. The applicable Annexes being reproduced at schedule 7 of this Call-Off Contract.
- 2.4 The Framework Agreement incorporated clauses will be referred to as 'incorporated Framework clause XX', where 'XX' is the Framework Agreement clause number.
- 2.5 When an Order Form is signed, the terms and conditions agreed in it will be incorporated into this Call-Off Contract.

3. Supply of services

- 3.1 The Supplier agrees to supply the G-Cloud Services and any Additional Services under the terms of the Call-Off Contract and the Supplier's Application.
- 3.2 The Supplier undertakes that each G-Cloud Service will meet the Buyer's acceptance criteria, as defined in the Order Form.

4. Supplier staff

- 4.1 The Supplier Staff must:
- 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 8.78 to 8.86. 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.

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 Protection of Sensitive Information and Assets 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/collection/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 during the Term of this Call-Off Contract. Both plans will comply with the Buyer's security policy and protect all aspects and processes associated with the delivery of the Services.
- 16.2 The Supplier will use all reasonable endeavours, software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software.
- 16.3 If Malicious Software causes loss of operational efficiency or loss or corruption of Service Data, the Supplier will help the Buyer to mitigate any losses and restore the Services to operating efficiency as soon as possible.
- 16.4 Responsibility for costs will be at the:
- 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 8.87 to 8.88 (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.

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	9am 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

- 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
- 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

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

33. Data Protection Legislation (GDPR)

- 33.1 Pursuant to clause 2.1 and for the avoidance of doubt, clauses 8.57 and 8.58 of the Framework Agreement are incorporated into this Call-Off Contract. For reference, the appropriate GDPR templates which are required to be completed in accordance with clauses 8.57 and 8.58 are reproduced in this Call-Off Contract document at schedule 7

Schedule 3 - Collaboration agreement – NOT USED

Schedule 4 - Alternative clauses – NOT USED

Schedule 6 - Glossary and interpretations

In this Call-Off Contract the following expressions mean:

Expression	Meaning
Additional Services	Any services ancillary to the G-Cloud Services that are in the scope of Framework Agreement 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

	<p>to) any:</p> <ul style="list-style-type: none"> information about business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential').
Control	'Control' as defined in section 1124 and 450 of the Corporation Tax Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly.
Controller	Takes the meaning given in the GDPR.
Crown	The government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies carrying out functions on its behalf.
Data Loss Event	event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Framework Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach
Data Protection Impact Assessment	An assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data.
Data Protection Legislation (DPL)	<p>Data Protection Legislation means:</p> <ul style="list-style-type: none"> i) (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time ii) (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to Processing of personal data and privacy; iii) (iii) all applicable Law about the Processing of personal data and privacy including if applicable legally binding guidance and codes of practice issued by the Information Commissioner .
Data Subject	Takes the meaning given in the GDPR
Default	<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(s)	The G-Cloud Services the Buyer contracts the Supplier to provide under this Call-Off Contract.
Digital Marketplace	The government marketplace where Services are available for Buyers to buy. (https://www.digitalmarketplace.service.gov.uk/)
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 RM1557.11 together with the Framework Schedules.
Fraud	Any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.
Freedom of Information Act or FoIA	The Freedom of Information Act 2000 and any subordinate legislation made under the Act together with any guidance or codes of practice issued by the Information Commissioner or relevant Government department in relation to the legislation.

G-Cloud Services	The cloud services described in Framework Agreement Section 2 (Services Offered) as defined by the Service Definition, the Supplier Terms and any related Application documentation, which the Supplier must make available to CCS and Buyers and those services which are deliverable by the Supplier under the Collaboration Agreement.
GDPR	The General Data Protection Regulation (Regulation (EU) 2016/679).
Good Industry Practice	Standards, practices, methods and process conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar undertaking in the same or similar circumstances.
Government Procurement Card	The Government's preferred method of purchasing and payment for low value goods or services https://www.gov.uk/government/publications/government-procurement-card--2 .
Guarantee	The guarantee described in Schedule 5.
Guidance	Any current UK Government Guidance on the Public Contracts Regulations 2015. In the event of a conflict between any current UK Government Guidance and the Crown Commercial Service Guidance, current UK Government Guidance will take precedence.
Implementation Plan	The plan with an outline of processes (including data standards for migration), costs (for example) of implementing the services which may be required as part of Onboarding.
Indicative Test	ESI tool completed by contractors on their own behalf at the request of CCS or the Buyer (as applicable) under clause 4.6.
Information	Has the meaning given under section 84 of the Freedom of Information Act 2000.
Information Security Management System	The information security management system and process developed by the Supplier in accordance with clause 16.1.
Inside IR35	Contractual engagements which would be determined to be within the scope of the IR35 Intermediaries legislation if assessed using the ESI tool.
Insolvency Event	Can be: <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 • all other rights having equivalent or similar effect in any country or jurisdiction
Intermediary	For the purposes of the IR35 rules an intermediary can be: <ul style="list-style-type: none"> • the supplier's own limited company

	<ul style="list-style-type: none"> • a service or a personal service company • a partnership <p>It does not apply if you work for a client through a Managed Service Company (MSC) or agency (for example, an employment agency).</p>
IPR Claim	As set out in clause 11.5.
IR35	IR35 is also known as 'Intermediaries legislation'. It's a set of rules that affect tax and National Insurance where a Supplier is contracted to work for a client through an Intermediary.
IR35 Assessment	Assessment of employment status using the ESI tool to determine if engagement is Inside or Outside IR35.
Know-How	All ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the G-Cloud Services but excluding know-how already in the Supplier's or 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 █████ but currently set at █████ of all Charges for the Services invoiced to Buyers (net of VAT) in each month throughout the duration of the Framework Agreement and thereafter, until the expiry or End of any Call-Off Contract.
Management Information	The management information specified in Framework Agreement section 6 (What you report to CCS).
Material Breach	Those breaches which have been expressly set out as a material breach and any other single serious breach or persistent failure to perform as required under this Call-Off Contract.
Ministry of Justice Code	The Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000.
New Fair Deal	The revised Fair Deal position in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 as amended.
Order	An order for G-Cloud Services placed by a Contracting Body with the Supplier in accordance with the Ordering Processes.

Order Form	The order form set out in Part A of the Call-Off Contract to be used by a Buyer to order G-Cloud Services.
Ordered G-Cloud Services	G-Cloud Services which are the subject of an Order by the Buyer.
Outside IR35	Contractual engagements which would be determined to not be within the scope of the IR35 intermediaries legislation if assessed using the ESI tool.
Party	The Buyer or the Supplier and 'Parties' will be interpreted accordingly.
Personal Data	Takes the meaning given in the GDPR.
Personal Data Breach	Takes the meaning given in the GDPR.
Processing	Takes the meaning given in the GDPR
Processor	Takes the meaning given in the GDPR.
Prohibited Act	<p>To directly or indirectly offer, promise or give any person working for or engaged by a Buyer or CCS a financial or other advantage to:</p> <ul style="list-style-type: none"> • induce that person to perform improperly a relevant function or activity • reward that person for improper performance of a relevant function or activity • commit any offence: <ul style="list-style-type: none"> ○ under the Bribery Act 2010 ○ under legislation creating offences concerning Fraud ○ at common Law concerning Fraud ○ committing or attempting or conspiring to commit Fraud
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).
Security Management Plan	The Supplier's security management plan developed by the Supplier in accordance with clause 16.1.
Services	The services ordered by the Buyer as set out in the Order Form.
Service Data	Data that is owned or managed by the Buyer and used for the G-Cloud Services, including backup data.
Service Definition(s)	The definition of the Supplier's G-Cloud Services provided as part of their Application that includes, but isn't limited to, those items listed in Section 2 (Services Offered) of the Framework Agreement.
Service Description	The description of the Supplier service offering as published on the Digital Marketplace.
Service Personal Data	The Personal Data supplied by a Buyer to the Supplier in the course of the use of the G-Cloud Services for purposes of or in connection with this Call-Off Contract.
Spend Controls	The approval process used by a central government Buyer if it needs to spend money on certain digital or technology services, see https://www.gov.uk/service-manual/agile-delivery/spend-controls-check-if-you-need-approval-to-spend-money-on-a-service
Start Date	The start date of this Call-Off Contract as set out in the Order Form.
Subcontract	Any contract or agreement or proposed agreement between the Supplier and a Subcontractor in which the Subcontractor agrees to provide to the Supplier the G-Cloud Services or any part thereof or facilities or goods and services necessary for the provision of the G-Cloud Services or any part thereof.
Subcontractor	Any third party engaged by the Supplier under a Subcontract (permitted under the Framework Agreement and the Call-Off Contract) and its servants or agents in connection with the provision of G-Cloud Services.
Subprocessor	Any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract.
Supplier	The person, firm or company identified in the Order Form.
Supplier Representative	The representative appointed by the Supplier from time to time in relation to the Call-Off Contract.
Supplier Staff	All persons employed by the Supplier together with the Supplier's servants, agents, suppliers and Subcontractors used in the performance of its obligations under this Call-Off Contract.
Supplier Terms	The relevant G-Cloud Service terms and conditions as set out in the Terms and Conditions document supplied as part of the Supplier's Application.
Term	The term of this Call-Off Contract as set out in the Order Form.
Variation	This has the meaning given to it in clause 32 (Variation process).
Working Days	Any day other than a Saturday, Sunday or public holiday in England and Wales.
Year	A contract year.

Schedule 7 - GDPR Information – NOT USED

Annex 2 - Joint Controller Agreement – NOT USED

Appendix A – Zimperium zScan EULA

ZIMPERIUM, INC. END USER LICENSE AGREEMENT

THIS DOCUMENT IS A LEGAL CONTRACT. PLEASE READ IT CAREFULLY. These End User License Terms ("*Terms*") govern your access to and use of the zIPS or zIAP client-side mobile application software (the "*Software*") provided by Zimperium, Inc. ("*Zimperium*," "*we*," or "*us*"), and the zCONSOLE cloud-based software-as-a-service application that we make available through or in connection with the Software (the "*Cloud Application*").

1. Acceptance of these Terms

Your use of and access to the Software and Cloud Application are conditioned on your compliance with these Terms and all applicable local, state, national, and international laws, rules and regulations. By installing the Software or by using the Software or Cloud Application you are indicating that you understand and agree to abide by these Terms. If the Software or Cloud Application is to be used by or on behalf of a company or other organization, the individual expressing acceptance of these Terms represents and warrants that he or she has the authority to bind that company or other organization to these Terms, and "you," and "your" will refer to that company or other organization. If you do not accept all of these Terms, then we are unwilling to license the Software or make the Cloud Application available to you, and you must delete all copies of the Software without retaining any copies thereof.

2. Rights to Use the Software and Cloud Application

Subject to your compliance with these Terms, we grant you a non-exclusive, non-transferable license to: (i) install one copy of the Software on each compatible mobile device for which we have issued you a valid license key for that Software (each, an "*Authorized Device*"); and (ii) use the Software on each such Authorized Device, and access and use the Cloud Application in connection with your Authorized Device(s), solely for your own personal or internal business use during the license period for which we have issued you the applicable license key(s). The foregoing rights may be suspended or terminated as set forth in these Terms. For non-evaluation and other paid licenses, the foregoing rights are also conditioned upon your timely payment and our receipt of all associated fees (as specified by us at the time you selected the license) and applicable taxes, if any.

3. Prohibitions

a. The Software and Cloud Application are intended to be used only in accordance with Zimperium's applicable documentation and only to evaluate, manage, and protect the security of mobile devices and wireless networks that you own or control. Any other use of the Software or Cloud Application is strictly prohibited. Prohibited uses include (without limitation) using the Software or Cloud Application to attack, probe, assess the security of, or interfere with any third party's network, device or other target without that third party's express, informed authorization. You may not disclose any vulnerability discovered, reproduced, or confirmed through the use of the Software or Cloud Application except in accordance with industry accepted vulnerability disclosure practices. You acknowledge that improper use of the Software or Cloud Application could significantly harm your network and/or devices, and you assume all risks associated with your use.

b. You may not, and you agree not to: (i) copy, modify or distribute the Software for any purpose; (ii) transfer, sublicense, lease, lend, rent or otherwise distribute the Software or the Cloud Application to any third party; (iii) decompile, reverse-engineer, disassemble, or create derivative works of the Software or the Cloud Application; (iv) make the functionality of the Software or the Cloud Application available to multiple users through any means; (v) use the Software or Cloud Application in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these Terms or our applicable documentation; (vi) access or use any areas of the Cloud Application for which we have not granted you authorization, or tamper or interfere with our computer systems or the technical delivery systems of our providers; (vii) gather or use information, such as other users' names, real names, or email addresses, through the Cloud Application to transmit any unsolicited advertising, junk mail, spam or other form of solicitation; or (viii) encourage or enable anyone to do any of the foregoing.

c. You promise to indemnify and hold harmless Zimperium and its representatives fully against any claims, liabilities, costs, expenses, and other harm arising from your unauthorized use of the Software or Cloud Application or any other violation of these Terms (including any of the prohibitions stated above). We reserve the right, but have no obligation, to monitor compliance with the prohibitions set forth above, and we may investigate and prosecute violations of any of the above and/or involve and cooperate with law enforcement authorities in prosecuting users who violate these Terms.

4. Ownership

Your rights with respect to the Software and Cloud Application are limited to those expressly granted in Section 2 above. Zimperium and its licensors reserve sole and exclusive ownership of the Software and Cloud Application and all copyrights, patents, trademarks, and other intellectual property rights therein. You may not remove, alter, or obscure any copyright, trademark, or other proprietary rights notices appearing on the Software or Cloud Application. If you provide us with any suggestions, comments, or other feedback regarding the Software or Cloud Application ("*Feedback*") you acknowledge that such Feedback will become the exclusive property of Zimperium, and we may use (or not use) any such Feedback in any manner and for any purpose, without compensation to you and without implying or creating any interest on your part in any of our products or services that may be based on such Feedback. You hereby irrevocably assign to us all right, title, and interest in any Feedback you provide.

5. Modifications

The Cloud Application and Software may change from time to time (for example, we may push updates to your Authorized Device, increase or decrease server capacity, or modify our user interface), and/or we may stop providing the Cloud Application or any of its features (permanently or temporarily), possibly without prior notice to you. In the case of paid licenses, however, we will not discontinue the essential features of the Software or Cloud Application during your paid license period without offering a reasonable substitute or alternative. We may decide to charge users a fee for the use of certain features, although if we do, we will provide you with prior notice before such fees take effect.

6. Data Collection and Transmission

a. If the Software is being delivered to you by an entity you are affiliated with (such as an employer, etc.), then the exact nature of any information collected is determined by the entity that made the Software available to you and is available by request from that entity. If you acquired the Software directly from Zimperium, then Zimperium will determine which information is collected and is available upon request from Zimperium.

The Software does not require any personally identifiable information from you, but it may collect information from the Authorized Device that is useful for the purpose of the Software and Cloud Application's functionality, called "*Device Data*". Device Data collected may include but is not limited to the following:

- The manufacturer and model of your Authorized Device;
- Certain technical settings of your Authorized Device, including the display size of your Authorized Device and firmware version;
- Your IP address (which can indicate your country and geolocation);
- Wireless carrier for your Authorized Device;
- The type and version of operating system on your Authorized Device;
- Certain configuration data of your Authorized Device, such as whether your Authorized Device is configured to allow root access or whether hardware restrictions of the Authorized Device have been removed;
- In some cases, metadata of all applications installed on your Authorized Device (including, but not limited to, the name of the app, the version of the app);
- Metadata about networks your Authorized Device connects to (including, but not limited to, the SSID of the network, the MAC address of the network);
- In certain circumstances, we may also collect a copy of the application;
- Data from tracking tools used to analyze product performance on your Authorized Device; and
- System monitoring data such as memory utilization, process metrics, network statistics (but no data like web pages or emails), and other non-user-identifiable type monitoring values.

The Software and Cloud Application may also collect "*Forensic Data*", defined here as information about the attacker when and if such an attack occurs. When an attack occurs, Forensic Data collected may include but is not limited to the following:

- The Device Data mentioned above at the time of the attack;
- The device location data at the time of the attack;
- The MAC address of the suspected attacker;
- The application name, bundle ID, and version of the suspected malicious apps.

Device Data and Forensic Data together, are hereinafter referred to as "*Data*". The exact nature of any Data collected is determined by the entity that made the Software available to you.

b. You consent to our collection, transmission, storage, monitoring, copying, processing, analysis and use of the Data to administer the Cloud Application, to develop and improve the Software and Cloud Application and our other products and services, and to monitor compliance with these Terms. You acknowledge that this may include transmission of your Data

to or from locations in the United States, Europe, and other countries or jurisdictions, potentially including those outside of where you reside or use the Software. We may also disclose Forensic Data as needed to cooperate with law enforcement activities and otherwise to fulfill our legal obligations and protect our legal rights. You are solely responsible for securing any privacy-related rights and permissions from your individual users of the Software, consistent with this Section, as may be required by local law or by your organization's internal policies.

7. User Rights Under General Data Protection Regulation (GDPR)

Zimperium cares about your data privacy and wants to be transparent about the following:

- What data is collected.
- How the data is used.
- Your rights to control the data.
- How Zimperium's Software and Cloud Application is enhanced to accommodate GDPR.

Zimperium has made changes to our Software, Cloud Application and our privacy statement. These changes align with the standards established by the General Data Protection Regulation (GDPR). This regulation is a set of laws passed in the European Union. Zimperium respects your personal data, and never sells it to third parties.

For more information on GDPR and limiting personally identifiable information (PII) data, see the following website: <https://www.eugdpr.org/>

For an end user with the zIPS application, Zimperium supports the following user requests:

- General GDPR Information Inquiry
- The Right to Access
- The Right to Be Forgotten

For each of these requests you can:

- Request general GDPR information using the email gdpr@zimperium.com.
- Request an inquiry (or "Right to Access") for the data persisted about you.

This is requested on the Zimperium Customer Support Portal by entering a ticket on this website: <https://support.zimperium.com>

- Request a removal of your information (or "Right to Be Forgotten") for the data persisted about you. This is requested on the Zimperium Customer Support Portal by entering a ticket on this website: <https://support.zimperium.com>.

Note: The "Right to be Forgotten" request causes your information to be permanently removed and going forward you will be an anonymous user to the Software and Cloud Application. This request cannot be rolled back or undone.

8. Contacting You

As part of making the Cloud Application available to you, we may need to provide you with certain communications, such as service announcements and administrative messages. These communications are considered part of the Cloud Application, which you may not be able to opt-out from receiving.

9. Third-Party Software

The Software and/or Cloud Application may be accompanied by or utilize certain third-party software components, libraries or applications that are distributed (with or without modifications) under open-source licensing terms (the "*Open-Source Components*"). Your rights with respect to the Open-Source Components are, to the extent of any conflict with these Terms, governed by and subject to the terms of the open-source licenses under which they are distributed. You are responsible for complying with those licenses. Please refer to our website for more specific information regarding the Open-Source Components that we redistribute and the licenses that apply to them. You may not assume or infer that we endorse, or that we have reviewed, verified, or authenticated, any Open-Source Components or other third-party software that may be furnished with, available through, or used in connection with the Software or Cloud Application. Open-Source Components and any other third-party software, and the information or results provided by them, may be unreliable, inaccurate, incomplete, delayed, or otherwise defective. We make no representations, warranties, or guarantees in connection with any third-party software or the information or results provided by it. You acknowledge sole responsibility for and assume all risk arising from your use of or reliance on any third-party software.

10. Verification and Audit

We may (but are not required to) monitor the use of the Software and Cloud Application, including by tracking the device IDs and license keys associated with the Authorized Devices on which the Software is used, for purposes of verifying compliance with these Terms. In addition, you agree to track and keep records of the individual users and Authorized Device(s) using the Software and promptly notify us if you learn of any unlicensed use. At our written request, you will provide us with a certification signed by you (or, if you are an organization, by an officer of the organization) verifying that the Software and Cloud Application are being used in compliance with these Terms. We may, at any time during the term of your license or for one year thereafter, upon reasonable written notice, audit your use of the Software. We may use a third-party organization to assist us in conducting such an audit. You agree to cooperate with us in such audit and will promptly make available to us all information, equipment and materials reasonably required by us to conduct such an audit. If an audit reveals that you have underpaid any license or service fees for the period audited, you agree to promptly pay us for such underpaid fees based on our price list in effect at the time the audit is completed. If the underpaid fees exceed five percent (5%) of the fees you paid for the relevant period, then you also agree to pay our reasonable costs of conducting the audit.

11. Termination

Your rights under these Terms will expire at the end of the period(s) for which you have acquired a valid license key from us for the Software. The Software may cease to function once the license key has expired. Any license renewals or extensions will be subject to availability and your payment of all applicable fees as then in effect. We have no obligation to offer license renewals or extensions, and we may condition renewals upon your acceptance of revised or new terms and

conditions. Your rights under these Terms will automatically terminate, and we may suspend or terminate your Account and your use of the Software and Cloud Application, immediately and without notice if you breach any of these Terms. In addition, we may suspend your Account and your use of the Software and Cloud Application as we deem appropriate to prevent, investigate, or otherwise address any suspected misuse of the Software or Cloud Application. Upon expiration or termination of these Terms or your Account, you agree to promptly and permanently delete all copies of the Software that are on the Authorized Device(s) or otherwise in your possession or control. The provisions of Sections 3, 4, 10, and 12 through 17 will survive any expiration or termination of these Terms.

12. Disclaimers

a. You understand and agree that the Software and the Cloud Application are provided to you "AS IS" and on an "AS AVAILABLE" basis. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, WE DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. We make no warranty that the Software or the Cloud Application will meet your requirements, will detect or prevent all security threats or vulnerabilities, or be available on an uninterrupted, secure, or error-free basis.

b. Some states or jurisdictions do not allow the exclusion of express or implied warranties in certain circumstances, so the above disclaimer may not apply to you. IN THAT EVENT, SUCH EXPRESS OR IMPLIED WARRANTIES SHALL BE LIMITED IN DURATION TO THE MINIMUM PERIOD REQUIRED BY THE APPLICABLE LAW.

13. Limitation of Liability

a. OUR TOTAL LIABILITY TO YOU FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY WILL NOT EXCEED THE AMOUNT OF FEES YOU PAID US FOR THE SOFTWARE LICENSE. IF YOU HAVE AN EVALUATION OR OTHER NON-PAID LICENSE, WE WILL HAVE NO LIABILITY TO YOU WHATSOEVER; PROVIDED, HOWEVER, THAT WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, OUR TOTAL LIABILITY SHALL INSTEAD BE LIMITED TO THE SUM OF FIFTY U.S. DOLLARS (\$50).

b. WE WILL NOT BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR FOR COSTS OF SUBSTITUTE GOODS OR SERVICES, OR FOR LOSS OF PROFITS, DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES, ARISING IN ANY WAY OUT OF THESE TERMS OR RESULTING FROM YOUR ACCESS TO, USE OF, OR INABILITY TO ACCESS OR USE THE SOFTWARE AND/OR CLOUD APPLICATION, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, WHETHER OR NOT WE HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

c. You acknowledge that it is your responsibility to implement back-up plans and other safeguards appropriate for the value of the networks, devices, data, and systems with which you use the Software and Cloud Application and, accordingly, that the foregoing exclusions and limitations of damages and liability are reasonable. The allocation of risk described in this Section 12 is an essential basis of the bargain between you and us, and without it, the fees charged for the Software and Cloud Application would be significantly higher. To the extent, if any, that applicable local laws prohibit the exclusion or limitation of certain liabilities or damages, the provisions of this Section 13 will apply only to the maximum extent permitted by such laws.

14. Maintenance and Support

We have no software maintenance or technical support obligations under these Terms. We may from time to time offer maintenance and support services or other add-on services for the Software or Cloud Application for you to purchase. Any add-on services will be subject to such separate fees and contract terms and conditions as we may specify when offering those services.

15. Export Control

You agree to comply fully with all relevant export laws and regulations of the United States and other applicable jurisdictions to ensure that neither the Software nor Cloud Application, nor any direct product thereof, are: (i) downloaded or otherwise exported or re-exported directly or indirectly in violation of such export laws and regulations; or (ii) used for any purposes prohibited by the such export laws and regulations, including but not limited to nuclear, chemical, or biological weapons proliferation.

16. U.S. Government End Users

The Software and Cloud Application consist of "commercial items," "commercial computer software" and "commercial computer software documentation," as those terms are used in FAR Subpart 12.2, DFARS 227.7202 and other government acquisition regulations, as applicable. Any use, duplication, or disclosure of the Software or Cloud Application by the U.S. government is permitted solely as expressly provided in Section 2 above and is subject to restrictions as set forth in these Terms.

17. General

These Terms will be governed by and construed in accordance with the laws of the State of California, without regard to or application of conflict of laws rules or principles. The parties to these Terms irrevocably consent to the jurisdiction of, and venue in, the state or federal courts located in the State of California for any disputes arising under these Terms. Our failure to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision. In the event that any provision of these Terms is held to be invalid or unenforceable, the remaining provisions of these Terms will remain in full force and effect. You may not assign, delegate or transfer these Terms or any of your rights or obligations hereunder without our prior written consent, and any attempt to do so will be void. We may assign these Terms without your consent. These Terms constitute the entire agreement between you and us regarding the Software and Cloud

Application, and they supersede and replace any prior agreements and understandings between you and us regarding the Software or Cloud Application.

18. Contacting Us

If you have any questions regarding these Terms, please contact us via email at: licensing@zimperium.com.

Agreement version: May 25, 2018