



Crown
Commercial
Service

G-Cloud 13 Call-Off Contract

This Call-Off Contract for the G-Cloud 13 Framework Agreement (RM1557.13) includes:

G-Cloud 13 Call-Off Contract

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Part A: Order Form

Buyers must use this template order form as the basis for all Call-Off Contracts and must refrain from accepting a Supplier's prepopulated version unless it has been carefully checked against template drafting.

Date of Contract	31 January 2023
Platform service ID number	Cloud services: [REDACTED] Cloud support: [REDACTED]
Call-Off Contract reference	CDL [REDACTED]
Call-Off Contract title	AWARD licence renewal
Call-Off Contract description	AWARD licence renewal from 1 April 2023 – 31 March 2027
Start date	1 April 2023
Expiry date	31 March 2027
Call-Off Contract value	£218,592
Charging method	BACS
Purchase order number	XXXX

This Order Form is issued under the G-Cloud 13 Framework Agreement ([REDACTED]).

From the Buyer	NHS Midlands & Lancashire CSU Tel: [REDACTED] [REDACTED]
To the Supplier	Commerce Decisions Ltd Tel: [REDACTED] [REDACTED]
Together the 'Parties'	

Principal contact details

For the Buyer:

Title: Head of Procurement & Corporate Services

Name: [REDACTED]

Email: [REDACTED]

Phone: [REDACTED]

For the Supplier:

Title: Account Manager

Name: [REDACTED]

Email: [REDACTED]

Phone: [REDACTED]

Call-Off Contract term

Start date	This Call-Off Contract Starts on 1 April 2023 and is valid for 48 months (36 months + 12 months as per Extension Period terms below)
Ending (termination)	<p>The notice period for the Supplier needed for Ending the Call-Off Contract is at least [90] Working Days from the date of written notice for undisputed sums (as per clause 18.6).</p> <p>The notice period for the Buyer is a maximum of 30 days from the date of written notice for Ending without cause (as per clause 18.1).</p>
Extension period	<p>This Call-Off Contract can be extended by the Buyer for one period of up to 12 months after the initial 36 month term, by giving the Supplier 30 days written notice before its expiry. The extension period is subject to clauses 1.3 and 1.4 in Part B below.</p> <p>Extensions which extend the Term beyond 36 months are only permitted if the Supplier complies with the additional exit plan requirements at clauses 21.3 to 21.8.</p> <p>If a buyer is a central government department and the contract Term is intended to exceed 36 months, then under the Spend Controls process, prior approval must be obtained from the Government Digital Service (GDS). Further guidance:</p> <p>https://www.gov.uk/service-manual/agile-delivery/spend-controls-check-if-you-need-approval-to-spend-money-on-a-service</p>

Buyer contractual details

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

G-Cloud Lot	<p>This Call-Off Contract is for the provision of Services Under:</p> <ul style="list-style-type: none">• Lot 2: Cloud software• Lot 3: Cloud support																									
G-Cloud Services required	<p>The Services to be provided by the Supplier under the above Lot are listed in Framework Schedule 4 and outlined below:</p> <p>4-year AWARD® licence renewal from 1st April 2023.</p> <table><tr><th>Item</th><th>Description</th><th>Qty</th><th>Unit Value</th><th>Total</th></tr><tr><td>1</td><td><p>4-year – █████ user AWARD® Licence</p><ul style="list-style-type: none">• Includes ExpertAssist• Licences to run from 1st April 2023 to 31st March 2027• Pricing includes multi-year discount</td><td>1</td><td>N/A</td><td>████████████████████ per year</td></tr><tr><td colspan="4">4-year sub-total (ex VAT)</td><td>████████████████████</td></tr><tr><td colspan="4">Discount of 20% per annum for continuation of service</td><td>████████████████████</td></tr><tr><td colspan="4">4-year total including 20% discount (exc VAT)</td><td>£218,592.00</td></tr></table> <p><i>*The licence option above is based on 50 core users with flex up to 500 for peaks in evaluation activity. For all use on all projects within NHS MLSCU.</i></p>	Item	Description	Qty	Unit Value	Total	1	<p>4-year – █████ user AWARD® Licence</p> <ul style="list-style-type: none">• Includes ExpertAssist• Licences to run from 1st April 2023 to 31st March 2027• Pricing includes multi-year discount	1	N/A	████████████████████ per year	4-year sub-total (ex VAT)				████████████████████	Discount of 20% per annum for continuation of service				████████████████████	4-year total including 20% discount (exc VAT)				£218,592.00
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4-year total including 20% discount (exc VAT)				£218,592.00																						
Additional Services	Not applicable																									
Location	<p>The Cloud software services will be delivered to Customer’s Location via hosted service</p> <p>The Cloud support services will be delivered remotely or to the Customer site as advised</p>																									
Quality Standards	The quality standards required for this Call-Off Contract are covered by Supplier’s █████ certification.																									
Technical Standards:	The technical standards used as a requirement for this Call-Off Contract are as defined in the Service Definition																									
Service level agreement:	The service level and availability criteria required for this Call-Off Contract are as defined in the Service Definition																									
Onboarding	The onboarding plan for this Call-Off Contract is not applicable – continuation of service																									

Offboarding	The offboarding plan for this Call-Off Contract, including export/archiving of data (if required) is as defined in the proposal or otherwise to be agreed with the Client. Please refer to the Service Definition for details of the options available (3-user read-only Audit access @ £1,800 per year or a data extract provided on a time and materials basis).
Collaboration agreement	N/A
Limit on Parties' liability	<p>The total liability of either Party for all Property Defaults will not exceed the total value of monies paid by the Buyer to the Supplier during the preceding 12 months of this contract</p> <p>The total liability for Buyer Data Defaults will not exceed the total value of monies paid by the Buyer to the Supplier during the preceding 12 months of this contract.</p> <p>The total liability for all other Defaults will not exceed the total value of monies paid by the Buyer to the Supplier during the preceding 12 months of this contract.</p>
Insurance	<p>The Supplier insurance(s) required will be:</p> <ul style="list-style-type: none"> • 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
Buyer's responsibilities	The Buyer is responsible for granting access to all relevant sites and personnel as required, and for respecting commitment to days booked in for training and/or consultancy delivery.
Buyer's equipment	N/A

Supplier's information

Subcontractors or partners	The following is a list of the Supplier's Subcontractors or Partners Not applicable
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Call-Off Contract charges and payment

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

Payment method	The payment method for this Call-Off Contract is BACS .																		
Payment profile	<div>The payment profile for this Call-Off Contract is as defined below.</div> <div><div>Invoicing Schedule</div><table><tr><th>Invoice</th><th>Description</th><th>Amount</th></tr><tr><td>March 2023</td><td>Year 1 - from 01/04/2023 to 31/03/2024</td><td></td></tr><tr><td>March 2024</td><td>Year 2 - from 01/04/2024 to 31/03/2025</td><td></td></tr><tr><td>March 2025</td><td>Year 3 - from 01/04/2025 to 31/03/2026</td><td></td></tr><tr><td>March 2026</td><td>Year 4 - from 01/04/2026 to 31/03/2027</td><td></td></tr><tr><td colspan="2">4-year total payable</td><td>£218,592.00</td></tr></table></div>	Invoice	Description	Amount	March 2023	Year 1 - from 01/04/2023 to 31/03/2024		March 2024	Year 2 - from 01/04/2024 to 31/03/2025		March 2025	Year 3 - from 01/04/2025 to 31/03/2026		March 2026	Year 4 - from 01/04/2026 to 31/03/2027		4-year total payable		£218,592.00
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March 2026	Year 4 - from 01/04/2026 to 31/03/2027																		
4-year total payable		£218,592.00																	
Invoice details	The Supplier will issue electronic invoices. The Buyer will pay the Supplier within 30 days of receipt of a valid invoice.																		
Who and where to send invoices to	<div>Invoices will be sent to</div> <div></div>																		

Invoice information required	All invoices must include relevant PO number															
Invoice frequency	Invoice will be sent to the Buyer as per the agreed invoicing schedule.															
Call-Off Contract value	The total value of this Call-Off Contract is £218,592															
Call-Off Contract charges	<div>The breakdown of the Charges is</div> <div>Invoicing Schedule</div> <table><tr><th>Invoice</th><th>Description</th><th>Amount</th></tr><tr><td>March 2023</td><td>Year 1 - from 01/04/2023 to 31/03/2024</td><td rowspan="4"></td></tr><tr><td>March 2024</td><td>Year 2 - from 01/04/2024 to 31/03/2025</td></tr><tr><td>March 2025</td><td>Year 3 - from 01/04/2025 to 31/03/2026</td></tr><tr><td>March 2026</td><td>Year 4 - from 01/04/2026 to 31/03/2027</td></tr><tr><td></td><td>4-year total payable</td><td>£218,592.00</td></tr></table>	Invoice	Description	Amount	March 2023	Year 1 - from 01/04/2023 to 31/03/2024		March 2024	Year 2 - from 01/04/2024 to 31/03/2025	March 2025	Year 3 - from 01/04/2025 to 31/03/2026	March 2026	Year 4 - from 01/04/2026 to 31/03/2027		4-year total payable	£218,592.00
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	4-year total payable	£218,592.00														

Additional Buyer terms

Performance of the Service	<p>This Call-Off Contract will include the following Implementation Plan, exit and offboarding plans and milestones:</p> <ul style="list-style-type: none"> As agreed in Supplier proposal or as per Service Definition
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
Personal Data and Data Subjects	Annex 1 of Schedule 7 is being used.
Intellectual Property	Please refer to Commerce Decisions terms
Social Value	N/A

1. Formation of contract

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

2. Background to the agreement

2.1 The Supplier is a provider of G-Cloud Services and agreed to provide the Services under the terms of Framework Agreement number R [REDACTED] .

Signed	Supplier	Buyer
Name	[REDACTED]	[REDACTED]
Title	Managing Director	Director of Finance
Signature	[REDACTED]	[REDACTED]
Date	24 th January 2023	02 February 2023

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

Customer Benefits

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

[G-Cloud 13 Customer Benefit Record](#)

Part B: Terms and conditions

1. Call-Off Contract Start date and length

- 1.1 The Supplier must start providing the Services on the date specified in the Order Form.
- 1.2 This Call-Off Contract will expire on the Expiry Date in the Order Form. It will be for up to 36 months from the Start date unless Ended earlier under clause 18 or extended by the Buyer under clause 1.3.
- 1.3 The Buyer can extend this Call-Off Contract, with written notice to the Supplier, by the period in the Order Form, provided that this is within the maximum permitted under the Framework Agreement of 1 period of up to 12 months.
- 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 set the Term at more than 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:
 - 2.3 (Warranties and representations)
 - 4.1 to 4.6 (Liability)
 - 4.10 to 4.11 (IR35)
 - 10 (Force majeure)
 - 5.3 (Continuing rights)
 - 5.4 to 5.6 (Change of control)
 - 5.7 (Fraud)
 - 5.8 (Notice of fraud)
 - 7 (Transparency and Audit)
 - 8.3 (Order of precedence)
 - 11 (Relationship)
 - 14 (Entire agreement)
 - 15 (Law and jurisdiction)
 - 16 (Legislative change)
 - 17 (Bribery and corruption)

- 18 (Freedom of Information Act)
- 19 (Promoting tax compliance)
- 20 (Official Secrets Act)
- 21 (Transfer and subcontracting)
- 23 (Complaints handling and resolution)
- 24 (Conflicts of interest and ethical walls)

- 25 (Publicity and branding)

- 26 (Equality and diversity)
- 28 (Data protection)
- 31 (Severability)
- 32 and 33 (Managing disputes and Mediation)
- 34 (Confidentiality)
- 35 (Waiver and cumulative remedies)
- 36 (Corporate Social Responsibility)
- paragraphs 1 to 10 of the Framework Agreement Schedule 3

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

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

2.2.2 a reference to 'CCS' or to 'CCS and/or the Buyer' will be a reference to 'the Buyer'

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

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

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

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

3. Supply of services

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

4. Supplier staff

- 4.1 The Supplier Staff must:
 - 4.1.1 be appropriately experienced, qualified and trained to supply the Services
 - 4.1.2 apply all due skill, care and diligence in faithfully performing those duties
 - 4.1.3 obey all lawful instructions and reasonable directions of the Buyer and provide the Services to the reasonable satisfaction of the Buyer
 - 4.1.4 respond to any enquiries about the Services as soon as reasonably possible
 - 4.1.5 complete any necessary Supplier Staff vetting as specified by the Buyer
- 4.2 The Supplier must retain overall control of the Supplier Staff so that they are not considered to be employees, workers, agents or contractors of the Buyer.
- 4.3 The Supplier may substitute any Supplier Staff as long as they have the equivalent experience and qualifications to the substituted staff member.
- 4.4 The Buyer may conduct IR35 Assessments using the ESI tool to assess whether the Supplier's engagement under the Call-Off Contract is Inside or Outside IR35.
- 4.5 The Buyer may End this Call-Off Contract for Material Breach as per clause 18.5 hereunder if the Supplier is delivering the Services Inside IR35.
- 4.6 The Buyer may need the Supplier to complete an Indicative Test using the ESI tool before the Start date or at any time during the provision of Services to provide a preliminary view of whether the Services are being delivered Inside or Outside IR35. If the Supplier has completed the Indicative Test, it must download and provide a copy of the PDF with the 14digit ESI reference number from the summary outcome screen and promptly provide a copy to the Buyer.

- 4.7 If the Indicative Test indicates the delivery of the Services could potentially be Inside IR35, the Supplier must provide the Buyer with all relevant information needed to enable the Buyer to conduct its own IR35 Assessment.
- 4.8 If it is determined by the Buyer that the Supplier is Outside IR35, the Buyer will provide the ESI reference number and a copy of the PDF to the Supplier.

5. Due diligence

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

6. Business continuity and disaster recovery

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

7. Payment, VAT and Call-Off Contract charges

- 7.1 The Buyer must pay the Charges following clauses 7.2 to 7.11 for the Supplier's delivery of the Services.
- 7.2 The Buyer will pay the Supplier within the number of days specified in the Order Form on receipt of a valid invoice.

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

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

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

9. Insurance

- 9.1 The Supplier will maintain the insurances required by the Buyer including those in this clause.

- 9.2 The Supplier will ensure that:

9.2.1 during this Call-Off Contract, Subcontractors hold third party public and products liability insurance of the same amounts that the Supplier would be legally liable to pay as damages, including the claimant's costs and expenses, for accidental death or bodily injury and loss of or damage to Property, to a minimum of £1,000,000

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

9.2.3 all agents and professional consultants involved in the Services hold professional indemnity insurance to a minimum indemnity of £1,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date

9.2.4 all agents and professional consultants involved in the Services hold employers liability insurance (except where exempt under Law) to a minimum indemnity of £5,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date

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

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

9.4.1 a broker's verification of insurance

9.4.2 receipts for the insurance premium

9.4.3 evidence of payment of the latest premiums due

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

10. Confidentiality

- 10.1 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 incorporated Framework Agreement clause 34. 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 Save for the licences expressly granted pursuant to Clauses 11.3 and 11.4, neither Party shall acquire any right, title or interest in or to the Intellectual Property Rights ("IPR"s) (whether pre-existing or created during the Call-Off Contract Term) of the other Party or its licensors unless stated otherwise in the Order Form.
- 11.2 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

11.3 The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Call-Off Contract Term to use the Buyer's or its relevant licensor's Buyer Data and related IPR solely to the extent necessary for providing the Services in accordance with this Contract, including the right to grant sub-licences to Subcontractors provided that:

11.3.1 any relevant Subcontractor has entered into a confidentiality undertaking with the Supplier on substantially the same terms as set out in Framework Agreement clause 34 (Confidentiality); and

11.3.2 the Supplier shall not and shall procure that any relevant Sub-Contractor shall not, without the Buyer's written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Buyer.

11.4 The Supplier grants to the Buyer the licence taken from its Supplier Terms which licence shall, as a minimum, grant the Buyer a non-exclusive, non-transferable licence during the Call-Off Contract Term to use the Supplier's or its relevant licensor's IPR solely to the extent necessary to access and use the Services in accordance with this Call-Off Contract.

11.5 Subject to the limitation in Clause 24.3, the Buyer shall:

11.5.1 defend the Supplier, its Affiliates and licensors from and against any third-party claim:

- (a) alleging that any use of the Services by or on behalf of the Buyer and/or Buyer Users is in breach of applicable Law;
- (b) alleging that the Buyer Data violates, infringes or misappropriates any rights of a third party;
- (c) arising from the Supplier's use of the Buyer Data in accordance with this Call-Off Contract; and

11.5.2 in addition to defending in accordance with Clause 11.5.1, the Buyer will pay the amount of Losses awarded in final judgment against the Supplier or the amount of any settlement agreed by the Buyer, provided that the Buyer's obligations under this Clause 11.5 shall not apply where and to the extent such Losses or third-party claim is caused by the Supplier's breach of this Contract.

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

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

11.6.2 Supplier's performance of the Services

11.6.3 use by the Buyer of the Services

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

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

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

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

11.8 Clause 11.6 will not apply if the IPR Claim is from:

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

11.8.2 other material provided by the Buyer necessary for the Services

11.9 If the Supplier does not comply with this clause 11, the Buyer may End this Call-Off Contract for Material Breach. The Supplier will, on demand, refund the Buyer all the money paid for the affected Services.

12. Protection of information

12.1 The Supplier must:

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

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

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

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

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

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

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

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

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

13. Buyer data

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

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

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

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

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

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

13.6.1 the principles in the Security Policy Framework:

<https://www.gov.uk/government/publications/security-policy-framework> and the Government Security Classification policy:
<https://www.gov.uk/government/publications/government-securityclassifications>

13.6.2 guidance issued by the Centre for Protection of National Infrastructure on Risk Management: <https://www.cpni.gov.uk/content/adopt-risk-managementapproach> and Protection of Sensitive Information and Assets: <https://www.cpni.gov.uk/protection-sensitive-information-and-assets>

13.6.3 the National Cyber Security Centre's (NCSC) information risk management guidance: <https://www.ncsc.gov.uk/collection/risk-management-collection>

13.6.4 government best practice in the design and implementation of system components, including network principles, security design principles for digital services and the secure email blueprint: <https://www.gov.uk/government/publications/technologycode-of-practice/technology-code-of-practice>

13.6.5 the security requirements of cloud services using the NCSC Cloud Security Principles and accompanying guidance: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles>

13.6.6 Buyer requirements in respect of AI ethical standards.

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

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

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

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

14. Standards and quality

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

- 14.2 The Supplier will deliver the Services in a way that enables the Buyer to comply with its obligations under the Technology Code of Practice, which is at:
<https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>
- 14.3 If requested by the Buyer, the Supplier must, at its own cost, ensure that the G-Cloud Services comply with the requirements in the PSN Code of Practice.
- 14.4 If any PSN Services are Subcontracted by the Supplier, the Supplier must ensure that the services have the relevant PSN compliance certification.
- 14.5 The Supplier must immediately disconnect its G-Cloud Services from the PSN if the PSN Authority considers there is a risk to the PSN's security and the Supplier agrees that the Buyer and the PSN Authority will not be liable for any actions, damages, costs, and any other Supplier liabilities which may arise.
15. Open source
- 15.1 All software created for the Buyer must be suitable for publication as open source, unless otherwise agreed by the Buyer.
- 15.2 If software needs to be converted before publication as open source, the Supplier must also provide the converted format unless otherwise agreed by the Buyer.
16. Security
- 16.1 If requested to do so by the Buyer, before entering into this Call-Off Contract the Supplier will, within 15 Working Days of the date of this Call-Off Contract, develop (and obtain the Buyer's written approval of) a Security Management Plan and an Information Security Management System. After Buyer approval the Security Management Plan and Information Security Management System will apply during the Term of this Call-Off Contract. Both plans will comply with the Buyer's security policy and protect all aspects and processes associated with the delivery of the Services.
- 16.2 The Supplier will use all reasonable endeavours, software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software.

- 16.3 If Malicious Software causes loss of operational efficiency or loss or corruption of Service Data, the Supplier will help the Buyer to mitigate any losses and restore the Services to operating efficiency as soon as possible.
- 16.4 Responsibility for costs will be at the:
- 16.4.1 Supplier's expense if the Malicious Software originates from the Supplier software or the Service Data while the Service Data was under the control of the Supplier, unless the Supplier can demonstrate that it was already present, not quarantined or identified by the Buyer when provided
- 16.4.2 Buyer's expense if the Malicious Software originates from the Buyer software or the Service Data, while the Service Data was under the Buyer's control
- 16.5 The Supplier will immediately notify the Buyer of any breach of security of Buyer's Confidential Information. Where the breach occurred because of a Supplier Default, the Supplier will recover the Buyer's Confidential Information however it may be recorded.
- 16.6 Any system development by the Supplier should also comply with the government's '10 Steps to Cyber Security' guidance:
<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>
- 16.7 If a Buyer has requested in the Order Form that the Supplier has a Cyber Essentials certificate, the Supplier must provide the Buyer with a valid Cyber Essentials certificate (or equivalent) required for the Services before the Start date.

17. Guarantee

- 17.1 If this Call-Off Contract is conditional on receipt of a Guarantee that is acceptable to the Buyer, the Supplier must give the Buyer on or before the Start date:
- 17.1.1 an executed Guarantee in the form at Schedule 5
- 17.1.2 a certified copy of the passed resolution or board minutes of the guarantor approving the execution of the Guarantee

18. Ending the Call-Off Contract

- 18.1 The Buyer can End this Call-Off Contract at any time by giving 30 days' written notice to the

Supplier, unless a shorter period is specified in the Order Form. The Supplier's obligation to provide the Services will end on the date in the notice.

18.2 The Parties agree that the:

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

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

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

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

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

18.4.2 any fraud

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

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

18.5.2 an Insolvency Event of the other Party happens

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

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

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

19. Consequences of suspension, ending and expiry

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

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

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

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

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

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

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

- 7 (Payment, VAT and Call-Off Contract charges)
- 8 (Recovery of sums due and right of set-off)
- 9 (Insurance)
- 10 (Confidentiality)
- 11 (Intellectual property rights)
- 12 (Protection of information)
- 13 (Buyer data)
- 19 (Consequences of suspension, ending and expiry)

- 24 (Liability); and incorporated Framework Agreement clauses: 4.1 to 4.6, (Liability), 24 (Conflicts of interest and ethical walls), 35 (Waiver and cumulative remedies)

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

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

- 19.5.1 return all Buyer Data including all copies of Buyer software, code and any other software licensed by the Buyer to the Supplier under it
- 19.5.2 return any materials created by the Supplier under this Call-Off Contract if the IPRs are owned by the Buyer
- 19.5.3 stop using the Buyer Data and, at the direction of the Buyer, provide the Buyer with a complete and uncorrupted version in electronic form in the formats and on media agreed with the Buyer
- 19.5.4 destroy all copies of the Buyer Data when they receive the Buyer's written instructions to do so or 12 calendar months after the End or Expiry Date, and provide written confirmation to the Buyer that the data has been securely destroyed, except if the retention of Buyer Data is required by Law
- 19.5.5 work with the Buyer on any ongoing work
- 19.5.6 return any sums prepaid for Services which have not been delivered to the Buyer, within 10 Working Days of the End or Expiry Date
- 19.6 Each Party will return all of the other Party's Confidential Information and confirm this has been done, unless there is a legal requirement to keep it or this Call-Off Contract states otherwise.
- 19.7 All licences, leases and authorisations granted by the Buyer to the Supplier will cease at the end of the Call-Off Contract Term without the need for the Buyer to serve notice except if this Call-Off Contract states otherwise.

20. Notices

- 20.1 Any notices sent must be in writing. For the purpose of this clause, an email is accepted as being 'in writing'.
- Manner of delivery: email
 - Deemed time of delivery: 9am on the first Working Day after sending
 - Proof of service: Sent in an emailed letter in PDF format to the correct email address without any error message

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

21. Exit plan

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

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

21.3 If the Buyer has reserved the right in the Order Form to extend the Call-Off Contract Term beyond 36 months the Supplier must provide the Buyer with an additional exit plan for approval by the Buyer at least 8 weeks before the 30 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 take the Term beyond 36 months is subject to the Buyer's own governance process. Where the Buyer is a central government department, this includes the need to obtain approval from GDS under the Spend Controls process. The approval to extend will only be given if the Buyer can clearly demonstrate that the Supplier's additional exit plan ensures that:

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

21.6.2 there will be no adverse impact on service continuity

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

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

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

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

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

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

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

21.8.4 the testing and assurance strategy for exported Buyer Data

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

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

22. Handover to replacement supplier

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

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

22.1.2 other information reasonably requested by the Buyer

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

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

23. Force majeure

23.1 If a Force Majeure event prevents a Party from performing its obligations under this Call-Off Contract for more than 30 consecutive days, 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 4.1 to 4.6, each Party's Yearly total liability for Defaults under or in connection with this Call-Off Contract shall not exceed the greater of five hundred thousand pounds (£500,000) or one hundred and twenty-five per cent (125%) of the Charges paid and/or committed to be paid in that Year (or such greater sum (if any) as may be specified in the Order Form).

24.2 Notwithstanding Clause 24.1 but subject to Framework Agreement clauses 4.1 to 4.6, the Supplier's liability:

24.2.1 pursuant to the indemnities in Clauses 7, 10, 11 and 29 shall be unlimited; and

24.2.2 in respect of Losses arising from breach of the Data Protection Legislation shall be as set out in Framework Agreement clause 28.

24.3 Notwithstanding Clause 24.1 but subject to Framework Agreement clauses 4.1 to 4.6, the Buyer's liability pursuant to Clause 11.5.2 shall in no event exceed in aggregate five million pounds (£5,000,000).

24.4 When calculating the Supplier's liability under Clause 24.1 any items specified in Clause 24.2 will not be taken into consideration.

25. Premises

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

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

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

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

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

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

25.5.2 comply with Buyer requirements for the conduct of personnel

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

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

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

26. Equipment

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

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

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

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

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

28. Environmental requirements

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

29. The Employment Regulations (TUPE)

- 29.1 The Supplier agrees that if the Employment Regulations apply to this Call-Off Contract on the Start date then it must comply with its obligations under the Employment Regulations and (if applicable) New Fair Deal (including entering into an Admission Agreement) and will indemnify the Buyer or any Former Supplier for any loss arising from any failure to comply.
- 29.2 Twelve months before this Call-Off Contract expires, or after the Buyer has given notice to End it, and within 28 days of the Buyer's request, the Supplier will fully and accurately disclose to the Buyer all staff information including, but not limited to, the total number of staff assigned for the purposes of TUPE to the Services. For each person identified the Supplier must provide details of:
 - 29.2.1 the activities they perform
 - 29.2.2 age
 - 29.2.3 start date
 - 29.2.4 place of work
 - 29.2.5 notice period
 - 29.2.6 redundancy payment entitlement
 - 29.2.7 salary, benefits and pension entitlements
 - 29.2.8 employment status
 - 29.2.9 identity of employer
 - 29.2.10 working arrangements
 - 29.2.11 outstanding liabilities
 - 29.2.12 sickness absence
 - 29.2.13 copies of all relevant employment contracts and related documents
 - 29.2.14 all information required under regulation 11 of TUPE or as reasonably requested by the Buyer

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.

29.3 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.

29.4 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.

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

29.5.1 its failure to comply with the provisions of this clause

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

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

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

30. Additional G-Cloud services

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

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

31. Collaboration

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

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

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

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

32. Variation process

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

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

32.3 If Either Party can't agree to or provide the Variation, the Buyer may agree to continue performing its obligations under this Call-Off Contract without the Variation, or End this CallOff 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, clause 28 of the Framework Agreement is incorporated into this Call-Off Contract. For reference, the appropriate UK GDPR templates which are required to be completed in accordance with clause 28 are reproduced in this Call-Off Contract document at Schedule 7.

Schedule 1: Services

[To be added in agreement between the Buyer and Supplier, and will be G-Cloud Services the Supplier is capable of providing through the Platform.]

[Enter text]

Schedule 2: Call-Off Contract charges

For each individual Service, the applicable Call-Off Contract Charges (in accordance with the Supplier's Platform 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:

- [Enter text]
- [Enter text]
- [Enter text]

Schedule 3: Collaboration agreement

This agreement is made on [enter date] between:

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

Whereas the:

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

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

1. Definitions and interpretation

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

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

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

1.1.3 "Contractor's Confidential Information" has the meaning set out in the Call-Off Contracts

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

1.1.5 "Collaboration Activities" means the activities set out in this Agreement

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

1.1.7 "Default" means any breach of the obligations of any Collaboration Supplier or any Default, act, omission, negligence or statement of any Collaboration Supplier, its employees, servants, agents or subcontractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Collaboration Supplier is liable (by way of indemnity or otherwise) to the other parties 1.1.8 "Detailed Collaboration Plan" has the meaning given in clause 3.2

1.1.9 "Dispute Resolution Process" means the process described in clause 9

1.1.10 "Effective Date" means [insert date]

1.1.11 "Force Majeure Event" has the meaning given in clause 11.1.1

1.1.12 "Mediator" has the meaning given to it in clause 9.3.1

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

1.1.14 "Term" has the meaning given to it in clause 2.1

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

1.2 General

1.2.1 As used in this Agreement the:

1.2.1.1 masculine includes the feminine and the neuter

1.2.1.2 singular includes the plural and the other way round

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

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

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

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

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

2. Term of the agreement

- 2.1 This Agreement will come into force on the Effective Date and, unless earlier terminated in accordance with clause 10, will expire 6 months after the expiry or termination (however arising) of the exit period of the last Call-Off Contract (the "Term").
- 2.2 A Collaboration Supplier's duty to perform the Collaboration Activities will continue until the end of the exit period of its last relevant Call-Off Contract.

3. Provision of the collaboration plan

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

- 3.2 Within 10 Working Days (or any other period as agreed in writing by the Buyer and the Collaboration Suppliers) of [receipt of the proposals] or [the Effective Date], the Buyer will prepare a plan for the Collaboration Activities (the "Detailed Collaboration Plan"). The Detailed Collaboration Plan will include full details of the activities and interfaces that involve all of the Collaboration Suppliers to ensure the receipt of the services under each Collaboration Supplier's respective [contract] [Call-Off Contract], by the Buyer. The Detailed Collaboration Plan will be based on the Outline Collaboration Plan and will be submitted to the Collaboration Suppliers for approval.
- 3.3 The Collaboration Suppliers will provide the help the Buyer needs to prepare the Detailed Collaboration Plan.
- 3.4 The Collaboration Suppliers will, within 10 Working Days of receipt of the Detailed Collaboration Plan, either:
- 3.4.1 approve the Detailed Collaboration Plan
 - 3.4.2 reject the Detailed Collaboration Plan, giving reasons for the rejection
- 3.5 The Collaboration Suppliers may reject the Detailed Collaboration Plan under clause 3.4.2 only if it is not consistent with their Outline Collaboration Plan in that it imposes additional, more onerous, obligations on them.
- 3.6 If the parties fail to agree the Detailed Collaboration Plan under clause 3.4, the dispute will be resolved using the Dispute Resolution Process.

4. Collaboration activities

- 4.1 The Collaboration Suppliers will perform the Collaboration Activities and all other obligations of this Agreement in accordance with the Detailed Collaboration Plan.
- 4.2 The Collaboration Suppliers will provide all additional cooperation and assistance as is reasonably required by the Buyer to ensure the continuous delivery of the services under the Call-Off Contract.
- 4.3 The Collaboration Suppliers will ensure that their respective subcontractors provide all cooperation and assistance as set out in the Detailed Collaboration Plan.

5. Invoicing

- 5.1 If any sums are due under this Agreement, the Collaboration Supplier responsible for paying the sum will pay within 30 Working Days of receipt of a valid invoice.
- 5.2 Interest will be payable on any late payments under this Agreement under the Late Payment of Commercial Debts (Interest) Act 1998, as amended.

6. Confidentiality

- 6.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the Collaboration Suppliers acknowledge that any Confidential Information obtained from or relating to the Crown, its servants or agents is the property of the Crown.
- 6.2 Each Collaboration Supplier warrants that:
 - 6.2.1 any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) will only use Confidential Information for the purposes of this Agreement
 - 6.2.2 any person employed or engaged by it (in connection with this Agreement) will not disclose any Confidential Information to any third party without the prior written consent of the other party
 - 6.2.3 it will take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (except as agreed) or used other than for the purposes of this Agreement by its employees, servants, agents or subcontractors
 - 6.2.4 neither it nor any person engaged by it, whether as a servant or a consultant or otherwise, will use the Confidential Information for the solicitation of business from the other or from the other party's servants or consultants or otherwise
- 6.3 The provisions of clauses 6.1 and 6.2 will not apply to any information which is:
 - 6.3.1 or becomes public knowledge other than by breach of this clause 6
 - 6.3.2 in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party

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

6.3.4 independently developed without access to the Confidential Information

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

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

7. Warranties

7.1 Each Collaboration Supplier warrant and represent that:

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

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

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

8. Limitation of liability

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

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

- 8.3 Subject always to clauses 8.1 and 8.2, the liability of the Buyer to any Collaboration Suppliers for all claims (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than if made fraudulently), breach of statutory duty or otherwise under this Agreement (excluding Clause 6.4, which will be subject to the limitations of liability set out in the relevant Contract) will be limited to [(£,000)].
- 8.4 Subject always to clauses 8.1 and 8.2, the liability of each Collaboration Supplier for all claims (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than if made fraudulently), breach of statutory duty or otherwise under this Agreement will be limited to [Buyer to specify].
- 8.5 Subject always to clauses 8.1, 8.2 and 8.6 and except in respect of liability under clause 6 (excluding clause 6.4, which will be subject to the limitations of liability set out in the [relevant contract] [Call-Off Contract]), in no event will any party be liable to any other for:
- 8.5.1 indirect loss or damage
 - 8.5.2 special loss or damage
 - 8.5.3 consequential loss or damage
 - 8.5.4 loss of profits (whether direct or indirect)
 - 8.5.5 loss of turnover (whether direct or indirect)
 - 8.5.6 loss of business opportunities (whether direct or indirect)
 - 8.5.7 damage to goodwill (whether direct or indirect)
- 8.6 Subject always to clauses 8.1 and 8.2, the provisions of clause 8.5 will not be taken as limiting the right of the Buyer to among other things, recover as a direct loss any:
- 8.6.1 additional operational or administrative costs and expenses arising from a Collaboration Supplier's Default
 - 8.6.2 wasted expenditure or charges rendered unnecessary or incurred by the Buyer arising from a Collaboration Supplier's Default
9. Dispute resolution process
- 9.1 All disputes between any of the parties arising out of or relating to this Agreement will be referred, by any party involved in the dispute, to the representatives of the parties specified in the Detailed Collaboration Plan.
- 9.2 If the dispute cannot be resolved by the parties' representatives nominated under clause 9.1 within a maximum of 5 Working Days (or any other time agreed in writing by the parties)

after it has been referred to them under clause 9.1, then except if a party seeks urgent injunctive relief, the parties will refer it to mediation under the process set out in clause 9.3 unless the Buyer considers (acting reasonably and considering any objections to mediation raised by the other parties) that the dispute is not suitable for resolution by mediation.

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

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

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

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

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

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

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

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

10. Termination and consequences of termination

10.1 Termination

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

10.2 Consequences of termination

- 10.2.1 Subject to any other right or remedy of the parties, the Collaboration Suppliers and the Buyer will continue to comply with their respective obligations under the [contracts] [Call-Off Contracts] following the termination (however arising) of this Agreement.
- 10.2.2 Except as expressly provided in this Agreement, termination of this Agreement will be without prejudice to any accrued rights and obligations under this Agreement.

11. General provisions

11.1 Force majeure

- 11.1.1 For the purposes of this Agreement, the expression "Force Majeure Event" will mean any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to any party, the party's personnel or any other failure of a Subcontractor.
- 11.1.2 Subject to the remaining provisions of this clause 11.1, any party to this Agreement may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.

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

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

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

11.2 Assignment and subcontracting

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

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

11.3 Notices

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

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

11.4 Entire agreement

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

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

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

11.5 Rights of third parties

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

11.6 Severability

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

11.7 Variations

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

11.8 No waiver

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

11.9 Governing law and jurisdiction

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

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

For and on behalf of the Buyer

Signed by:

Full name (capitals):

Position:

Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position: Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position: Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position: Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position: Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position: Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position:

Date:

Collaboration Agreement Schedule 1: List of contracts

Collaboration supplier	Name/reference of contract	Effective date of contract

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

Schedule 4: Alternative clauses

1. Introduction

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

2. Clauses selected

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

2.1.1 Scots Law and Jurisdiction

2.1.2 References to England and Wales in incorporated Framework Agreement clause 15.1 (Law and Jurisdiction) of this Call-Off Contract will be replaced with Scotland and the wording of the Framework Agreement and Call-Off Contract will be interpreted as closely as possible to the original English and Welsh Law intention despite Scots Law applying.

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

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

2.1.5 Reference to the Supply of Goods and Services Act 1982 will be removed in incorporated Framework Agreement clause 4.1.

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

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

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

2.3 Discrimination

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

- Employment (Northern Ireland) Order 2002
- Fair Employment and Treatment (Northern Ireland) Order 1998
- Sex Discrimination (Northern Ireland) Order 1976 and 1988

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

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

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

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

2.4 Equality policies and practices

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

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

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

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

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

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

The Supplier will take any necessary steps (including the dismissal or replacement of any relevant staff or Subcontractor(s)) as the Customer directs and will seek

the advice of the Equality Commission in order to prevent any offence or repetition of the unlawful discrimination as the case may be.

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

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

2.5 Equality

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

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

2.6 Health and safety

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

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

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

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

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

2.7 Criminal damage

2.7.1 The Supplier will maintain standards of vigilance and will take all precautions as advised by the Criminal Damage (Compensation) (Northern Ireland) Order 1977 or as may be recommended by the police or the Northern Ireland Office (or, if replaced, their successors) and will compensate the Customer for any loss arising

directly from a breach of this obligation (including any diminution of monies received by the Customer under any insurance policy).

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

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

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

Schedule 5: Guarantee

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

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

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

and

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

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

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

Suggested headings are as follows:

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

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

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

Definitions and interpretation

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

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

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

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

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

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

Unless the context otherwise requires:

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

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

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

Guarantee and indemnity

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

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

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

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

Obligation to enter into a new contract

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

Demands and notices

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

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

[Enter Email address of the Guarantor

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

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

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

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

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

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

Beneficiary's protections

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

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

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

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

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

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

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

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

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

Any release, discharge or settlement between the Guarantor and the Buyer will be conditional upon no security, disposition or payment to the Buyer by the Guarantor or any other person being void,

set aside or ordered to be refunded following any enactment or Law relating to liquidation, administration or insolvency or for any other reason. If such condition will not be fulfilled, the Buyer will be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Buyer will be entitled to retain this security before and after the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Buyer from the Guarantor for such period as the Buyer may determine.

Representations and warranties

The Guarantor hereby represents and warrants to the Buyer that:

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

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

Payments and set-off

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

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

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

Guarantor's acknowledgement

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

Assignment

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

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

Severance

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

Third-party rights

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

Governing law

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

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

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

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

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

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

EXECUTED as a DEED by

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

Director

Director/Secretary

Schedule 6: Glossary and interpretations

In this Call-Off Contract the following expressions mean:

Expression	Meaning
Additional Services	Any services ancillary to the G-Cloud Services that are in the scope of Framework Agreement Clause 2 (Services) 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 Platform).
Audit	An audit carried out under the incorporated Framework Agreement clauses.
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	<p>Data, Personal Data and any information, which may include (but isn't limited 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 UK 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 Call-Off Contract and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
Data Protection Impact Assessment (DPIA)	An assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data.
Data Protection Legislation (DPL)	(i) the UK GDPR as amended from time to time; (ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy; (iii) all applicable Law about the Processing of Personal Data and privacy.
Data Subject	Takes the meaning given in the UK 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>
DPA 2018	Data Protection Act 2018.
Employment Regulations	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) ('TUPE') .
End	Means to terminate; and Ended and Ending are construed accordingly.
Environmental Information Regulations or EIR	The Environmental Information Regulations 2004 together with any guidance or codes of practice issued by the Information Commissioner or relevant government department about the regulations.
Equipment	The Supplier's hardware, computer and telecoms devices, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from CCS or the Buyer) in the performance of its obligations under this Call-Off Contract.

ESI Reference Number	The 14 digit ESI reference number from the summary of the outcome screen of the ESI tool.
Employment Status Indicator test tool or ESI tool	The HMRC Employment Status Indicator test tool. The most up-to-date version must be used. At the time of drafting the tool may be found here: https://www.gov.uk/guidance/check-employment-status-fortax
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	<p>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).</p>
Framework Agreement	<p>The clauses of framework agreement RM1557.13 together with the Framework Schedules.</p>

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 Clause 2 (Services) 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.
UK GDPR	The retained EU law version of 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.
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	<p>Contractual engagements which would be determined to be within the scope of the IR35 Intermediaries legislation if assessed using the ESI tool.</p>
Insolvency event	<p>Can be:</p> <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 • a Dun & Bradstreet rating of 10 or less
Intellectual Property Rights or IPR	<p>Intellectual Property Rights are:</p> <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	<p>For the purposes of the IR35 rules an intermediary can be:</p> <ul style="list-style-type: none"> • the supplier's own limited company • a service or a personal service company • a partnership <p>It does not apply if you work for a client through a Managed Service Company (MSC) or agency (for example, an employment agency).</p>

IPR claim	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 Buyer's possession before the Start date.
Law	Any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply.
Loss	All losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and ' Losses ' will be interpreted accordingly.
Lot	Any of the 3 Lots specified in the ITT and Lots will be construed accordingly.

Malicious Software	Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
Management Charge	The sum paid by the Supplier to CCS being an amount of up to 1% but currently set at 0.75% of all Charges for the Services invoiced to Buyers (net of VAT) in each month throughout the duration of the Framework Agreement and thereafter, until the expiry or End of any Call-Off Contract.
Management Information	The management information specified in Framework Agreement Schedule 6.
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 UK GDPR.

Personal Data Breach	Takes the meaning given in the UK GDPR.
Platform	The government marketplace where Services are available for Buyers to buy.
Processing	Takes the meaning given in the UK GDPR.
Processor	Takes the meaning given in the UK 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: pseudonymisation and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.
PSN or Public Services Network	The Public Services Network (PSN) is the government's highperformance 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 GCloud 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 Clause 2 (Services) of the Framework Agreement.
Service description	The description of the Supplier service offering as published on the Platform.
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 <u>check-if-you-need-approval-to-spend-money-on-a-service</u>
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 GCloud 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: UK GDPR Information

This schedule reproduces the annexes to the UK GDPR schedule contained within the Framework Agreement and incorporated into this Call-off Contract and clause and schedule references are to those in the Framework Agreement but references to CCS have been amended.

Annex 1: Processing Personal Data

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

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

Description	Details
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<p>Identity of Controller for each Category of Personal Data</p>	<p>The Buyer is Controller and the Supplier is Processor</p> <p>The Parties acknowledge that in accordance with paragraphs 2 to paragraph 15 of Schedule 7 and for the purposes of the Data Protection Legislation, Buyer is the Controller and the Supplier is the Processor of the Personal Data recorded below</p> <p>Commerce Decisions AWARD[®] service does not hold sensitive personal data other than names and email addresses, which are required to login to the system. AWARD[®] also contains audit trails which define the actions of its users. Commerce Decisions is the Processor of such data.</p> <p>Data uploaded in to the system by the Buyer may include personal data (such as details in CVs) – Buyer is Controller of all data in the system.</p>
<p>Duration of the Processing</p>	<p>For the duration of the contract</p>
<p>Nature and purposes of the Processing</p>	<p>To facilitate the fulfilment of the Supplier's obligations arising under this Framework Agreement including</p> <ul style="list-style-type: none"> i. Ensuring effective communication between the Supplier and CSS ii. Maintaining full and accurate records of every Call-Off Contract arising under the Framework Agreement in accordance with Clause 7.6 iii. Names and email addresses are required to login to the system. AWARD[®] also contains audit trails which define the actions of its users. Email addresses are required for secure access to the AWARD[®] service.

	<p>iv. Names and email addresses of primary users/contract owners (as notified to Commerce Decisions) are logged in our CRM system in order to provide AWARD® service updates where appropriate.</p>
Type of Personal Data	<p>Includes:</p> <ul style="list-style-type: none"> i. Contact details of, and communications with, CSS staff concerned with the management of the Framework Agreement ii. Contact details of, and communications with, Buyer staff concerned with award and management of Call-Off Contracts awarded under the Framework Agreement iii. Contact details, and communications with, Sub-contractor staff concerned with fulfilment of the Supplier's obligations arising from this Framework Agreement Contact details, and communications with Supplier staff concerned with management of the Framework Agreement iv. Names and email addresses of AWARD® users and contract owner/s

Categories of Data Subject	<p>Includes:</p> <ul style="list-style-type: none"> i. CSS staff concerned with management of the Framework Agreement ii. Buyer staff concerned with award and management of Call-Off Contracts awarded under the Framework Agreement iii. Sub-contractor staff concerned with fulfilment of the Supplier's obligations arising from this Framework Agreement iv. Supplier staff concerned with fulfilment of the Supplier's obligations arising under this Framework Agreement v. Users of the AWARD® service
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under Union or Member State law to preserve that type of data	All relevant data to be deleted 7 years after the expiry or termination of this Framework Contract unless longer retention is required by Law or the terms of any Call-Off Contract arising hereunder

Annex 2: Joint Controller Agreement

1. Joint Controller Status and Allocation of Responsibilities

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of paragraphs 2 to 15 of Schedule 7 (Where one Party is Controller and the other Party is Processor) and paragraphs 17 to 27 of Schedule 7 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the [**select: Supplier or Buyer**]:

- (a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
- (b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
- (c) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
- (d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
- (e) shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the **[select: Supplier's or Buyer's]** privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

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

2. Undertakings of both Parties

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

- (a) report to the other Party every **[insert number]** months on:
 - (i) the volume of Data Subject Request (or purported Data Subject Requests) from Data Subjects (or third parties on their behalf);
 - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;

- (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
 - (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
 - (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law, that it has received in relation to the subject matter of the Contract during that period;
- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1(a)(i) to (v);
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- (d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
- (e) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
- (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
- (g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:

- (i) are aware of and comply with their 's duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information
 - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
 - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data as required by the applicable Data Protection Legislation;
- (h) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
- (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that it holds; and
- (i) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.

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

3. Data Protection Breach

3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any

Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

- (a) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation; and
- (b) all reasonable assistance, including:
 - (i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
 - (ii) co-operation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;
 - (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
 - (iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 3.2.

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

- (a) the nature of the Personal Data Breach;
- (b) the nature of Personal Data affected;
- (c) the categories and number of Data Subjects concerned;
- (d) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;

- (e) measures taken or proposed to be taken to address the Personal Data Breach; and
- (f) describe the likely consequences of the Personal Data Breach.

4. Audit

4.1 The Supplier shall permit:

- (a) the Buyer, or a third-party auditor acting under the Buyer's direction, to conduct, at the Buyer's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or
- (b) the Buyer, or a third-party auditor acting under the Buyer's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

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

5. Impact Assessments

5.1 The Parties shall:

- (a) provide all reasonable assistance to the each other to prepare any data protection impact assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and
- (b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the Contract, in accordance with the terms of Article 30 UK GDPR.

6. ICO Guidance

- 6.1 The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

7. Liabilities for Data Protection Breach

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

- 7.1 If financial penalties are imposed by the Information Commissioner on either the Buyer or the Supplier for a Personal Data Breach ("Financial Penalties") then the following shall occur:
- (a) if in the view of the Information Commissioner, the Buyer is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Buyer, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Buyer, then the Buyer shall be responsible for the payment of such Financial Penalties. In this case, the Buyer will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Supplier shall provide to the Buyer and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;
 - (b) if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or
 - (c) if no view as to responsibility is expressed by the Information Commissioner, then the Buyer and the Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any Financial Penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then

such Dispute shall be referred to the procedure set out in clause 32 of the Framework Agreement (Managing disputes).

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

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

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

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

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

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

8. Termination

8.1 If the Supplier is in material Default under any of its obligations under this Annex 2 (Joint Controller Agreement), the Buyer shall be entitled to terminate the Contract by issuing a Termination Notice to the Supplier in accordance with Clause 5.1.

9. Sub-Processing

- 9.1 In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:
- (a) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
 - (b) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

10. Data Retention

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

ANNEX B – Supplier terms

Order of precedence as per Clause 8.3 of the GCloud 12 framework agreement

If there's any conflict or ambiguity between the clauses of this agreement, to the extent necessary, the order of

precedence for resolving the conflict is:

- the Framework Agreement
- the completed Order Form
- the clauses of a Call-Off Contract (excluding Supplier Terms)
- the Supplier's Terms
- any other document referred to in the Call-Off Contract clauses

Commerce Decisions Terms and Conditions

PART 1 - MAIN TERMS AND CONDITIONS

1. Introductory

This Part 1, the Main Terms and Conditions, comprising Clauses 1 to 13 applies to all software licences and services forming part of the Agreement.

2. Definitions

1. "Agreement" means the written agreement concluded between COMMERCE DECISIONS and the Customer, including the Scope of Work (if applicable) and any specifications or other documents that are expressly incorporated into it, including the Quotation, and incorporating these terms and conditions (which shall take precedence in the event of any conflict).

2. "Business Days" means Monday to Friday except statutory and public holidays in the United Kingdom.

3. "Consultancy Service" means consultancy in the installation and/or use of the software product licence to be provided by COMMERCE DECISIONS as described in the Scope of Work, or as otherwise agreed in the Agreement.

4. "Customer" means the party who purchases or agrees to purchase the Software Licence and/or the Services.

5. "Customer Resources" has the meaning given in Clause 22.4.

6. "Deliverable" has the meaning given in Clause 22.3.

7. "Proprietary Information" means trade secrets, and all other information of a confidential or proprietary nature including but not limited to any and all technical information, data, drawings, process information and know-how and embracing reports, computer Software (whether in object or source code) and designs and any information concerning products, customers, business accounts, financial or contractual arrangements or other dealings, transactions or affairs, reports, recommendations, advice or tests and development plans, and in whatever form whether in writing, given orally or contained in an electronic format, and which is either marked as confidential (or with some similar legend) or otherwise clearly intended to be confidential.

8. "COMMERCE DECISIONS" means COMMERCE DECISIONS LIMITED registered in United Kingdom, Company No. 415 7081.

9. "Quotation" means COMMERCE DECISIONS' quotation for the supply of Software Licences and/or Services;

10. "Scope of Work" means the scope of the Services to be carried out under the Agreement, as specified (or referred to) in the Quotation;

11. "Software" means the AWARD or ADVANCE software product and its related modules and documentation which is proprietary to COMMERCE DECISIONS and its licensors, together with any updates provided under this Agreement, but excluding both Third Party Distributed Software and Third Party Required Software, and for the avoidance of doubt the grant of a licence to use the Software is not part of the Services but is instead governed by the Software Licence.

12. "Software Hosting Service" means the service providing access over the World Wide Web to the Software installed on computer systems owned and operated by or for COMMERCE DECISIONS.

13. "Software Maintenance Services" means the services providing bug fixes, and updates to the Software as further described in Clause 20.1.

14. "Software Licence" means a licence to use the AWARD or ADVANCE Software and associated modules in accordance with Clause 15.

15. "Services" means the Software Hosting Service and/or the Software Maintenance Service and/or the Consultancy Service as set out in the Scope of Work, or as otherwise agreed between the Parties, which are to be carried out by COMMERCE DECISIONS.

16. "Third Party Distributed Software" means certain third party software which is used by the Software to perform some of its functions but excluding the Third Party Required Software. If the Customer elects the option to install the Software on his computer system rather than subscribe to the Software Hosting Service to access and use the Software, the Third Party Distributed Software will be distributed to him on the media containing the Software or by alternative means.

17. "Third Party Required Software" means third party software required to be installed by the Customer on his computer system where the Software is installed, when wishing to use certain functionality of the Software but excluding any standard computer operating system.

3. Agreement

1. COMMERCE DECISIONS shall grant the Software Licence and perform the Services (in each case as relevant) in accordance with these terms and conditions, which are the only terms upon which COMMERCE DECISIONS is prepared to deal with the Customer and they shall govern the Agreement to the entire exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or any other document).

2. Each order by the Customer for the grant of a Software Licence or supply of Services shall be deemed to be an offer by the Customer to purchase the same subject to these terms and conditions.

3. The Agreement (together with COMMERCE DECISIONS' acceptance of any purchase order) represents the entire agreement between the parties relating to the Software and Services. Where there is inconsistency between the Agreement and any such purchase order, the terms of the Agreement shall prevail.

4. Payment

1. COMMERCE DECISIONS shall invoice the Customer at the times stated in the Agreement, or otherwise at the end of each month in which the Services are provided.

2. The Customer shall pay to COMMERCE DECISIONS the fees in respect of the Services by bank transfer to a bank account nominated by COMMERCE DECISIONS (or other payment methods acceptable to COMMERCE DECISIONS) within 30 days of submission of an invoice by COMMERCE DECISIONS.

3. Unless otherwise stated in the Agreement, the fees are exclusive of any Value Added Tax, sales tax or similar, and any taxes, duties or imposts chargeable thereon all of which shall be payable by the Customer as an additional charge. All payments due from the Customer shall be made without deduction of any set-offs, taxes, charges and other duties (including any withholding or income taxes). In the event any withholding tax is applied, the Customer shall make such additional payment as is required to ensure that the same sum is received by COMMERCE DECISIONS as if no such withholding tax been imposed.

4. If the Customer disputes any invoice or part thereof, the Customer shall immediately notify Commerce Decisions in writing of the reasons therefor. The Customer shall immediately pay the undisputed portion of the invoice and the parties shall seek to resolve the dispute within 14 days, and in the absence of a resolution the provisions of Clause 12 (Dispute Resolution) shall apply. Upon resolution of the dispute, such sum as is agreed by the parties as payable shall be paid immediately to COMMERCE DECISIONS, together with any interest due under Clause 4.5.

5. If the Customer fails to pay COMMERCE DECISIONS any sum due pursuant to the Agreement, the Customer will be liable to pay interest to COMMERCE DECISIONS on such sums from the due date for payment at an annual rate equivalent to the base lending rate from time to time of Lloyds TSB Bank plc plus 4 percentage points, accruing on a daily basis until payment is made, whether before or after any judgement.

6. Whenever under the Agreement any sum of money shall be recoverable from or payable by the Customer, COMMERCE DECISIONS may deduct the same from any sum then due to the Customer under the Agreement or any other contract between COMMERCE DECISIONS and the Customer.

5. Warranty and Exclusive Remedy

1. COMMERCE DECISIONS warrants that it shall use reasonable skill and care in performance of the Services, but makes no warranty that all or any of the Deliverables will be suitable to enable the Customer to achieve any particular purpose even when such purpose has been notified to COMMERCE DECISIONS.

2. Subject to Clause 18, COMMERCE DECISIONS makes no warranty that all or any of the Deliverables or Software will not infringe the rights of any third party.

3. Where COMMERCE DECISIONS supplies, in connection with the provision of the Services or Software, any services or software supplied by a third party, COMMERCE DECISIONS does not give any warranty, guarantee or assurance of any kind as to their quality, fitness for purpose or otherwise nor is any software support given, but it shall, where reasonably possible, assign to the Customer the benefit of any warranty, guarantee or indemnity given by the third party supplying the services or software to COMMERCE DECISIONS.

4. Other than as expressly set out in these terms and conditions, COMMERCE DECISIONS makes no warranty and accepts no liability for the use made of all or any of the Deliverables or Software by the Customer or by any third party who has obtained such Deliverables or Software directly or indirectly from the Customer.

5. Subject to Clause 5.6 below, if any defect or fault is found to exist in the Deliverables resulting from the performance of the Services not in conformance with the warranty in Clause 5.1, COMMERCE DECISIONS shall at its option either (i) re-perform the relevant Services or part thereof; and/or repair or replace any Deliverables (or the defective part) or (ii) refund such proportion of the charges paid to COMMERCE DECISIONS by the Customer for the Services as is reasonable, PROVIDED THAT, if COMMERCE DECISIONS so requests, the Customer shall, at the Customer's expense, return any Deliverables or the part which is defective to COMMERCE DECISIONS.

6. COMMERCE DECISIONS shall have no liability of any kind for breach of its warranty in Clause 5.1 in circumstances where:

1. the Customer fails to give written notice of the alleged breach to COMMERCE DECISIONS within ten (10) days of the time when the Customer discovers or ought to have discovered it and in any event within three (3) months of delivery of the affected Services or Deliverable or, having given such notice:

1. fails to give COMMERCE DECISIONS a reasonable opportunity to examine any such Deliverables concerned; or

2. fails (having been asked to do so by COMMERCE DECISIONS) to return, at the Customer's cost, such Deliverables for examination at COMMERCE DECISIONS' place of business; or

3. continues to make full or substantially full use of such Services or Deliverables; or

2. the defect arises as a result of: (i) defects in any Customer Resources; or (ii) the Customer failing to follow COMMERCE DECISIONS' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Deliverables or (if there are none) good trade practice; or (iii) the Customer altering or repairing any Deliverables without the prior written consent of COMMERCE DECISIONS; or

3. any sums remain due and outstanding under the Agreement at the date of receipt by COMMERCE DECISIONS of the notice referred to in Clause 5.6.1.

7. THE CUSTOMER ACKNOWLEDGES AND ACCEPTS THAT THE WARRANTIES AT CLAUSE 5.1 AND ASSOCIATED REMEDIES AT CLAUSE 5.5 ARE ITS SOLE AND ENTIRE WARRANTIES AND REMEDIES IN CONNECTION WITH THE PERFORMANCE BY COMMERCE DECISIONS OF THE SERVICES UNDER THIS AGREEMENT. ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, TERMS, STATEMENTS, UNDERTAKINGS AND OBLIGATIONS WHICH MAY OTHERWISE BE IMPLIED (BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) IN RELATION TO THE SERVICES ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

6. Limitations of Liability

1. Nothing in the Agreement shall exclude or limit the liability of COMMERCE DECISIONS (including any acts of its employees, agents and subcontractors) for death or personal injury caused by COMMERCE DECISIONS' proven negligence or fraud committed by COMMERCE DECISIONS (including fraudulent misrepresentation) or any other matter for which it would be illegal, or in breach of statutory provision, for COMMERCE DECISIONS to exclude its liability.

2. SUBJECT TO CLAUSE 6.1, COMMERCE DECISIONS' AGGREGATE LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION OR OTHERWISE, ARISING IN CONNECTION WITH THE PERFORMANCE, NON-PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE AGREEMENT SHALL BE LIMITED TO THE TOTAL FEES PAID AND PAYABLE BY THE CUSTOMER UNDER THE AGREEMENT.

3. SUBJECT TO CLAUSE 6.1, IN NO EVENT WILL COMMERCE DECISIONS OR ANY SUPPLIER OF THIRD PARTY DISTRIBUTED SOFTWARE OR THIRD PARTY REQUIRED SOFTWARE BE LIABLE TO THE CUSTOMER FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS, DAMAGE, COSTS, EXPENSES OR OTHER CLAIMS WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF BUSINESS, DEPLETION OF GOODWILL OR LIKE LOSS, OR LOSS OF DATA, OR ARISING FROM LOSS OF DATA, LOSS OF USE OR LOSS OF OPPORTUNITY OR OTHER INTANGIBLE LOSSES (EVEN IF COMMERCE DECISIONS HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH LOSS, DAMAGE, COST OR EXPENSE)) OR ANY LOSS, DAMAGE OR LIABILITY TO THE EXTENT CAUSED BY THE NEGLIGENCE, WILFUL MISCONDUCT OR OTHER FAULT OF THE CUSTOMER, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS; IN EACH CASE HOWSOEVER CAUSED, INCLUDING WITHOUT LIMITATION NEGLIGENCE OR BREACH OF STATUTORY DUTY OR MISREPRESENTATION, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR ANY LIABILITY INCURRED BY THE CUSTOMER WITHOUT COMMERCE DECISIONS' PRIOR WRITTEN AUTHORISATION.

4. SUBJECT TO CLAUSE 6.1, THE CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT COMMERCE DECISIONS AND ANY SUPPLIER OF THIRD PARTY DISTRIBUTED SOFTWARE OR THIRD PARTY REQUIRED SOFTWARE SHALL NOT BE LIABLE TO THE CUSTOMER FOR: (i) THE CUSTOMER'S USE OR THE INABILITY TO USE THE SERVICES; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICES; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF THE CUSTOMER'S TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICES; OR (v) ANY OTHER MATTER RELATING TO THE SERVICES.

5. OTHER THAN AS EXPRESSLY STATED IN THESE TERMS AND CONDITIONS, COMMERCE DECISIONS MAKES NO WARRANTY OR REPRESENTATION THAT (i) THE SERVICES OR SOFTWARE WILL MEET THE CUSTOMER'S REQUIREMENTS, (ii) THE SERVICES OR SOFTWARE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR SOFTWARE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY THE CUSTOMER THROUGH USE OF THE SOFTWARE OR THE SERVICES WILL MEET THE CUSTOMER'S EXPECTATIONS, OR (v) THAT ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.

6. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES OR ACCESS TO THE SOFTWARE IS DONE AT THE CUSTOMER'S OWN DISCRETION AND RISK AND THE CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

7. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY THE CUSTOMER FROM COMMERCE DECISIONS OR THROUGH OR FROM THE SERVICES OR SOFTWARE SHALL HAVE THE EFFECT OF CREATING ANY WARRANTY OR OTHER OBLIGATION NOT EXPRESSLY STATED IN THE AGREEMENT.

7. Commercial Confidentiality

1. Without prejudice to the rights of either party arising elsewhere in the Agreement, all Proprietary Information exchanged between the Customer and COMMERCE DECISIONS (including that contained in any Customer Resources and Deliverables) shall be treated as commercially confidential in accordance with this Clause.

2. Neither party shall use, disclose or knowingly permit to be disclosed to any person (except those employees, agents or sub-contractors who need to know the information for the purposes of the Agreement) any Proprietary Information of the other party without the prior written consent of the other party and both parties shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the parties to the Agreement.

3. The obligations of confidentiality owed by one party to the other set out in this Clause shall remain in force despite the completion (or earlier determination) of the Agreement but shall not apply to information which:

1. is in or enters the public domain (otherwise than by a breach of the receiving party's confidentiality obligations under the Agreement);
2. is known without restriction to the receiving party at the time of disclosure without breach of any obligation of confidentiality;
3. becomes known to the receiving party without restriction from an independent source having the right to convey it;
4. is shown to the reasonable satisfaction of the originating party to have been generated independently by the receiving party;

4. Nothing herein shall prevent the disclosure of information by the receiving party to the extent required by applicable law or by the regulations of any stock exchange or regulatory authority to which such party is subject or pursuant to any order of court or other competent authority or tribunal PROVIDED THAT:

1. the receiving party first gives the other party, where possible, the opportunity to make and/or manage the necessary disclosure;
2. where the receiving party is required to make the disclosure itself, the disclosure made is the minimum required (having regard to all possible exemptions from disclosure) and is made under maximum possible constraints of confidentiality; and
3. the other party is provided with full information on the intended disclosure and is fully consulted.

5. This Clause 7 shall not apply to the disclosure of any Proprietary Information contained in any Deliverables to the extent that such disclosure is reasonably necessary for the exercise by the Customer of the rights referred to in Clause 22.10.

6. The parties acknowledge that damages would not be an adequate remedy for any breach of this Clause and that (without prejudice to any other rights or remedies that the parties may be entitled to as a matter of law), both parties will be entitled to the remedies of injunction, specific performance, and other equitable relief to enforce the provisions of this Clause and no proof of special damages shall be necessary for the enforcement of the provisions of this Clause.

8. Miscellaneous

1. Each party warrants to the other that it has not relied upon any representation not recorded here which has induced it to enter into the Agreement, and the Agreement constitutes the entire agreement between the parties in connection with its subject matter.

2. No amendment will be valid unless confirmed in writing and signed by an authorised signatory of COMMERCE DECISIONS.

3. In the event that any of these terms and conditions or any part of any term or condition is judged illegal or unenforceable for any reason the continuation in force of the remainder of these terms and conditions will not be prejudiced. In such circumstances, the parties shall co-operate in good faith to replace the unlawful, invalid or unenforceable with a provision that is lawful, valid and enforceable and insofar as is possible, achieves the original intent of the provision it replaces.

4. No delay or failure by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights, or of any breach of any contractual terms, will be deemed to be a waiver of any other right or of any later breach.

5. Neither party will assign or transfer all or any part of the Agreement (including the Software Licence) without the prior written consent of the other party except that COMMERCE DECISIONS may assign the benefit of all or any part of the Agreement to any company which is or becomes the legal owner of all or the applicable part of the Software or as part of a corporate re-organisation.

6. The Customer undertakes that it will not employ any person who has provided the Consultancy Service or engage such person to provide services to it at any time within 6 months of the end of the last month in which such consultant provided the Consultancy Service to the Customer as an employee or consultant to COMMERCE DECISIONS. By way of a reasonable pre-estimate of damages and not a penalty, if in breach of this sub-clause, the Customer undertakes to pay COMMERCE DECISIONS a fee equal to 25 per cent of the basic salary payable to such person by COMMERCE DECISIONS or 25 per cent of the fees paid to such person as a consultant in the 12 months prior to the last date upon which he provided services to COMMERCE DECISIONS.

7. Each party acknowledges that it is acting as an independent contractor and not in any way as an agent or representative of the other. Neither party has authority to bind or speak for the other party except as may be specified in writing from time to time.

8. Subject to Clause 8.9, neither the Customer nor COMMERCE DECISIONS shall, for publicity purposes, without the prior written consent of the other party; (i) make use of the other party's name or the names of that party's personnel, customers or agents (but this shall not prevent publicity of any separate relationship existing between that party and the customer or agent concerned); or (ii) refer to the other party or the Agreement in any advertisement, announcement or notice, except to the extent required by law or any competent regulatory body.

9. Unless the Customer has notified COMMERCE DECISIONS in writing as at the date of this Agreement or within 5 Business Days thereafter, not to publicise the fact that the Customer is a customer of COMMERCE DECISIONS, COMMERCE DECISIONS may (but is not obliged to) refer to the Customer by name and/or use the Customer's logo to identify the Customer, on the COMMERCE DECISIONS' web site and/or other marketing material, to the fact the Customer is a customer of COMMERCE DECISIONS and/or a user of Software and/or related services (and for the avoidance of doubt COMMERCE DECISIONS will not publicise the Customer's use of the Software in association with a particular project or other Proprietary Information of the Customer without the Customer's prior written agreement). However COMMERCE DECISIONS shall be entitled to disclose details of this Agreement to third parties to enable COMMERCE DECISIONS to fulfil any reporting obligations it has (including to third parties whose software is comprised within the Software).

10. Where the Customer is an organisation resident or incorporated in the USA, it is agreed that the Uniform Computer Information Transactions Act does not apply to this Agreement.

11. The Supplier shall comply with the Modern Slavery Act 2015 and any other modern slavery laws, legislation, regulations or directives ("Modern Slavery Legislation") which apply to its business or which apply in the place where the Contract is performed. The Supplier will not and will procure that its employees, subcontractors, agents and representatives will not, engage in any activity, practice or conduct which would constitute an offence under any Modern Slavery Legislation.

12. A breach of Clause 8.11 shall be deemed to be a material breach of the Contract.

13. Each Party shall comply with any trade, financial or other sanctions regime which apply in relation to its business including, without limitation, sanctions and embargos imposed by: (i) the UN, EU, UK or US (including regimes administered by the United States Department of the Treasury, Office of Foreign Assets Control (OFAC) and Her Majesty's Treasury); and (ii) any other such regime which applies in relation to a Party's business.

14. COMMERCE DECISIONS is always working to improve the Software. In order to do so, COMMERCE DECISIONS measures, analyses and aggregates how users interact with the Software, investigating usage patterns and characteristics of the user base. Analytics data is collected and used by COMMERCE DECISIONS only – it is not distributed or used in any other way or for any other purpose.

9. Termination for breach and insolvency

1. Either party will immediately become entitled (without prejudice to its other rights in law or equity or under the Agreement) to terminate the Agreement forthwith by notice in writing to the other party if the other party:

1. makes default or commits any material breach of its obligations under the Agreement and, upon receiving written notification from the other of such default or breach, fails to remedy the default or breach within thirty (30) days (if capable of remedy); or

2. is involved in any legal proceedings concerning its solvency, or commences liquidation (except for purposes of reconstruction on a solvent basis) or ceases or threatens to cease trading, or if serious doubt arises as to its solvency.

3. The provisions of Clauses 4.5, 4.6, 5, 6, 7, 8.3, 8.4, 8.6, 8.8, 8.9, 11, 12, 13, 14.1, 16.4, 21.9, 21.12, 21.15, 21.23, and 22.9 shall survive expiry or termination of the Agreement together with any other provision which by the nature of its terms is implicitly intended to survive expiry or termination.

4. Termination or expiry of this Agreement shall not affect any rights and remedies which have already accrued prior to such termination or expiry.

10. Notices

1. A notice given under this or in connection with the Agreement must be in writing and delivered by hand or sent by first class pre-paid post to the Managing Director at COMMERCE DECISIONS Ltd, 101 Park Drive, Milton Park, Oxfordshire OX14 4RY United Kingdom or (as the case may be) to the address of the Customer shown in the Agreement or to such other address as COMMERCE DECISIONS or the Customer may substitute by notice to the other party. Notice shall be deemed given: (i) if sent by first class post or international overnight courier: two Business Days after posting or sending by such courier exclusive of the day of posting or sending; or (ii) if delivered by hand: on the day of delivery.

11. Force Majeure

Neither party will be liable for total or partial failure to perform its obligations in the Agreement during any period in which its performance is prevented or hindered by circumstances beyond its reasonable control.

12. Dispute Resolution

1. If any dispute arises out of or in connection with this Agreement ("Dispute") the parties undertake that, prior to the commencement of any legal proceedings pursuant to Clause 13, they will seek to have the Dispute resolved amicably by use of an alternative dispute resolution procedure acceptable to both parties. Either party will be entitled to initiate the process by written notice to the other.

2. If the Dispute has not been resolved to the satisfaction of either party within thirty days of initiation of the procedure pursuant to Clause 12.1 or if either party fails or refuses to participate in or withdraws from participating in the procedure then either party may deal with the Dispute through legal proceedings issued in accordance with Clause 12.

13. Jurisdiction and Third Party Rights

1. The Agreement and any dispute or claim arising out of or in connection with it (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) will be governed and construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the English Courts PROVIDED THAT each party shall have the right to enforce a judgement of the English Courts in a jurisdiction where the other party is incorporated or in which the assets of the other party may be situated.

2. Where there are components in the Software which are proprietary to third parties, such third parties shall have the right to enforce the terms of this Agreement to the extent relating to the use of such components by the Customer (however any termination or variation of this Agreement does not require the prior consent of such third parties to be obtained). Other than to that extent, this Agreement is not intended to confer any rights enforceable by third parties under the Contracts (Rights of Third Parties) Act 1999.

PART 2 - SOFTWARE LICENCES

In addition to Part 1, this Part 2 comprising Clauses 14 to 19 inclusive shall apply to Software Licences.

14. Terms of supply of Software Licence

1. If the Customer does not subscribe to the Software Hosting Service for accessing the Software but requires a copy of the Software to be installed on his own computer system, it will be supplied on media. Any media upon which the Software has been supplied and any copy thereof remains, like the Software, the property of COMMERCE DECISIONS, to whom it must be returned upon request or upon the termination or expiry of the Software Licence. Such media will also contain a copy of the Third Party Distributed Software. Such installation on his own computer system may also require the Customer to purchase and install a copy Third Party Required Software to obtain the benefit of certain functionality of the Software. Upon request, and in consideration for payment of its price from time to time, COMMERCE DECISIONS may be prepared to purchase a licence for the benefit of the Customer to install and use such Third Party Required Software subject always to the Customer accepting the licence conditions applicable to such Third Party Required Software.

2. COMMERCE DECISIONS warrants that:

1. it has good title and/or valid legal agreements to licence the Software to the Customer and the media upon which the Software is supplied will be free from material defect for a period of 30 days from the date of delivery of the Software; and
2. the operation of and facilities provided in the Software will be materially in accordance with the documentation supplied with the Software under the Agreement when used in collaboration with the hardware and software indicated in such documentation for the duration of the software license..

3. The warranties in Clause 14.2 are the only warranties given by COMMERCE DECISIONS in respect of the Software and the Customer waives all implied guarantees and warranties, including, without limitation, any warranty of satisfactory quality or fitness for purpose in relation to the Software.

4. Without limitation to any other term of this licence, no warranty is given that the Software will meet the Customer's expectation and/or that the Software will operate without defect.

15. Licence to Use the Software

1. Under the Agreement, the Customer is granted a licence ("Software Licence") to use the Software in object code only:

- a. for the term indicated in the Agreement or, in the absence of such specification, for one year from the date on which the Software is delivered or on which access to the Software is first permitted (as applicable); and
- b. for the business purposes of the Customer (such use to include the use by agents, contractors or suppliers, but solely to the extent such usage is to support the conduct of the internal business purposes of the Customer).

The Software, Third Party Distributed Software or Third Party Required Software may contain source code including but not restricted to example code or source code for open-source or other components. The right to use such source code is governed by the Software Licence.

2. The Software Licence does not permit the Customer to de-compile the object code or make any use of the source (human readable format) code. Except to the extent permitted under this Agreement or where such rights are granted at law and cannot be restricted, this Software Licence does not permit the Customer to rent, lease, license, transfer, loan, copy, modify, adapt, merge, translate, reverse engineer, disassemble or create derivative works from the Software nor shall the Software be used for the purpose of a hosted, leased, timesharing or rental service to other parties. The same restrictions apply to any Third Party Distributed Software and Third Party Required Software unless the licence terms relating to such components of the Software expressly permit such activities to be undertaken.

3. The Customer shall not copy or permit the Software to be copied in whole or in part except that one copy may be made as is required for the sole purpose of back-up security. All copies made shall include all copyright or proprietary notices.

4. The Software is licensed to the Customer on a "per named user" basis for a licence period specified in the Quotation (or if no period is specified, then for a period of one year). The Software will not be accessed from more terminals or by more named users than the Customer has paid for. Licensing for Software covers up to the total licensed number of named users using the Software for the applicable licence period. The Customer shall inform COMMERCE DECISIONS of those of its employees or bona fide consultants permitted to use the Software upon COMMERCE DECISIONS' request. The Customer shall not be entitled to any rebate, discount or refund if the Software is actually used by fewer users than the number paid for by the Customer.

5. The termination or expiry of a Software Licence will automatically terminate any associated maintenance or hosting obligations of COMMERCE DECISIONS.

6. All Third Party Distributed Software and Third Party Required Software (if supplied by COMMERCE DECISIONS) is provided for use with the Software only and may not be used for any other purpose or by any other application. No separate use of such software components is authorised.

16. Customer's Undertakings

The Customer undertakes:

1. to take reasonable account of any opinion of COMMERCE DECISIONS that an identified member of the Customer's staff is incapable or unsuitable for training on or operating or using the Software;

2. to take sole responsibility for determining that the Customer's computer operating systems are ready and are of sufficient specification to enable the operational use of the Software in the Customer's business before it is so used, and any operation requirements shall be set out in any documentation accompanying the Software;

3. to ensure that the software operating system and any other software with which the Software will be used is either the property of the Customer or is legally licensed to the Customer and the Customer will indemnify COMMERCE DECISIONS in respect of any claims by third parties and all related costs, expenses or damages in the event of any actual or alleged violations of third party proprietary rights or software licences which result in any claim against COMMERCE DECISIONS;

4. to abide by all obligations and restrictions set out in the relevant licence conditions of Third Party Distributed Software and (if supplied by COMMERCE DECISIONS) Third Party Required Software including (without limitation) those governing their use, copying, redistribution, modification or otherwise and accepts that these contain certain other provisions such as (without limitations) those relating to applicable law, restriction on import or re-export and compliance with US export control laws. Such licence conditions may be included in the installation details, associated documentation or readme files in the Software. If the Customer considers that the terms of any such conditions are unacceptable and these were not made aware to the Customer at or before the time the Agreement was entered into, then provided it has made no use of the Software, the Customer is entitled to cancel the Software Licence subject to written notice of cancellation being given within two (2) weeks of the Agreement coming into force (and if exercised, a refund of any licence fee paid will be made); and

5. to install at his own expense the necessary updates, patches and the like to the Third Party Distributed Software and Third Party Required Software, all as may be advised by COMMERCE DECISIONS from time to time during the term of the Software Licence, for compatibility with the Software.

6. to ensure that users including agents, contractors, customers or suppliers abide by these license terms

7. to provide reasonable assistance and access to allow auditing of the use of the Software or any Third Party Distributed Software or Third Party Required Software, including where necessary passing on such rights to the supplier of Third Party Distributed Software or (if supplied by COMMERCE DECISIONS) Third Party Required Software.

8. to not publish or otherwise divulge to any third party information about the performance of the Software (including without limitation any assessment of the performance of the Software relative to other software), unless specific permission is first sought from COMMERCE DECISIONS

17. Title

1. No title or rights of ownership, copyright or other intellectual property in the Software or any Third Party Distributed Software or Third Party Required Software have been, are, or will be transferred to the Customer.

2. Copyright in the Software (whether printed or stored magnetically) shall vest in COMMERCE DECISIONS and its licensors and the Customer will not delete any proprietary marks on the Software.

3. Any modifications to the Software whether carried out by the Customer or by COMMERCE DECISIONS or by any third party will form part of the Software and will be subject to these terms and conditions.

18. Patents, Copyright and Registered Design

1. If notified promptly of any claim or action brought against the Customer on the issue of infringement by the Software of any patent, copyright or registered design in the country of supply, COMMERCE DECISIONS will defend or cause to be defended such action at its expense and will pay any costs or damages awarded against the Customer in such action, provided that COMMERCE DECISIONS has sole control of the defence and all negotiations for settlement.

2. In the event that a final injunction is obtained against the Customer's use of the Software by reason of such infringement, COMMERCE DECISIONS will, at its option and its expense either procure for the Customer the right to continue using the Software or the affected parts of it, or replace or modify the Software or any part of it so that it becomes non-infringing, or if the above is not reasonably feasible, accept return of the Software, and refund an amount equal to the sum paid by the Customer for the Software, subject to straight-line depreciation to nil over the terms of the Software Licence or a four (4) year period (whichever period is shorter).

3. COMMERCE DECISIONS will have no liability under this Clause 18 for:

- a. any infringement arising from the combination of the Software with any other software products not supplied by COMMERCE DECISIONS; or
- b. the modification of the Software or any part of it unless the modification was made or approved by COMMERCE DECISIONS; or
- c. any use of the Software which is not expressly permitted under the Software Licence; or
- d. the Third Party Distributed Software (which for the avoidance of doubt is distributed without charge by COMMERCE DECISIONS) or any Third Party Required Software as may be supplied under the Agreement, in respect of which the provisions of Clause 5.3 shall apply.

19. Integrity of Data

1. The parties agree that the Customer is the best judge of the value and importance of the data held on the computer system on which the Software is to operate, and will be solely responsible for:

- a. instituting and operating all necessary backup procedures to ensure that data integrity can be maintained in the event of loss of data for any reason;
- b. taking out any insurance policy or other financial cover for loss or damage which may arise from loss of data for any reason.

PART 3 - SOFTWARE MAINTENANCE SERVICES

In addition to Part 1, this Part 3 comprising Clause 20 shall apply to Software Maintenance Services.

20. Software Maintenance Services

1. The Software maintenance service ("Software Maintenance Service") commences from the date of delivery of the Software for the term indicated in the Agreement or, in the absence of such specification, for one year. Software Maintenance Service will be provided on the basis that the Customer has implemented all releases, updates and patches to the Software within 30 days of release by COMMERCE DECISIONS.

2. The Software Maintenance Service comprises:

- a. Program fault reporting over the telephone to COMMERCE DECISIONS office between 9.00 a.m. to 5.00 p.m. on Business Days.
 - b. General advice and fault diagnosis and where possible correction, subject to the limitations imposed by contractual restrictions of any third party. Serious faults preventing computer processing will be given priority.
 - c. Where possible, recommendations relevant to the course of action necessary to recover from any faults or failures emanating from the Software.
 - d. COMMERCE DECISIONS may from time to time issue updates, releases or patches to the Software. Provided the Customer (i) is not in default of his obligation to pay maintenance charges and (ii) has provided a primary contact to whom such update, releases or patches should be delivered, COMMERCE DECISIONS will use reasonable endeavours to deliver such updates, releases and/or patches to the Customer.
 - e. Provision of a replacement copy of the Software at the Customer's request, at no charge other than the then current Software distribution charges (on standard media used by COMMERCE DECISIONS) and any shipping charges. COMMERCE DECISIONS reserves the right to supply replacement Software of a later version than that originally supplied. Such replacement copy shall be governed by the Software Licence.
3. COMMERCE DECISIONS reserves the right to refuse to provide the Software Maintenance Service at any time without refunding any monies paid by the Customer:
- a. if any attempt is made, other than by COMMERCE DECISIONS, to remove any defects or deal with any errors in the Software; or
 - b. if any development, enhancement or variation of the Software is carried out other than by COMMERCE DECISIONS; or
 - c. where, in the reasonable opinion of COMMERCE DECISIONS, the computer on which the Software is installed has ceased to be capable of running the Software successfully for any reason; or
 - d. If the Customer is not using the latest release of the Software thirty (30) days after its release to the Customer.
4. New versions of the Software may require the Customer to use at his expense new versions of other related software and/or may require additional or different computer equipment in order to function. Provisions of such new versions of related software or such computer equipment is not covered by the Agreement.
5. If the Customer wishes to have enhancements created for the Software, it is free to contact COMMERCE DECISIONS with a request for an enhancement.
6. COMMERCE DECISIONS reserves the right to make improvements, substitutions, modifications or enhancements to any part of the Software.

PART 4 – SOFTWARE HOSTING SERVICES

In addition to Part 1, this Part 4 comprising Clause 21 shall apply to Software Hosting Service.

21. Software Hosting Service

1. The Software Hosting Service commences from the next Business Day after the date of acceptance by COMMERCE DECISIONS of the order therefor for the term specified in the Agreement or, in the absence of such specification, for three months.
2. COMMERCE DECISIONS shall be entitled to suspend and/or terminate the Software Hosting Service and/or the Customer's access to such hosted Software if any fees due to COMMERCE DECISIONS are overdue for payment.
3. COMMERCE DECISIONS will provide a username, password and account designation to the Customer to accessing the Software Hosting Service. The Customer accepts responsibility for maintaining the confidentiality of the password and account, and is fully responsible for all activities that occur under these credentials. The Customer agrees to (a) immediately notify COMMERCE DECISIONS of any unauthorised use of password or account information and any other breach of security; and (b) ensure that it or its authorized users exit from the account at the end of each session. COMMERCE DECISIONS SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE ARISING FROM THE CUSTOMER'S FAILURE TO COMPLY WITH THIS CLAUSE.
4. The Customer accepts that access to the hosted Software over the internet poses a security risk, it is the Customer's responsibility to ensure that the security measures it puts in place are to its satisfaction.
5. COMMERCE DECISIONS shall have no liability for any loss damage or expense suffered by the Customer through the Customer's unauthorised disclosure of log-in details supplied by COMMERCE DECISIONS from time to time.
6. Other than for planned maintenance of the hosted Software at times to be notified by COMMERCE DECISIONS to the Customer, COMMERCE DECISIONS will use reasonable endeavours to ensure that the Customer has access to the hosted Software during each Business Day from 9am (London time) to 5.30 pm (London time). Without prejudice to any

other provision of the Agreement, the maximum liability of COMMERCE DECISIONS for any period during which the Customer is unable to use or access the hosted Software (other than as a result of planned maintenance or force majeure) shall be limited to X times Y/365 where X is the then annual hosting charge paid by the Customer and Y is the number of days during which the Customer was unable to use or access the hosted Software as a result of fault on the part of COMMERCE DECISIONS.

7. COMMERCE DECISIONS retains the right to move the location from where the service is provided between its own servers or between subcontractors.

8. Nothing in the Agreement shall render COMMERCE DECISIONS liable to the Customer if the Customer is unable to access the hosted Software as a result of failure of telecommunications and/or for loss of or damage to or corruption of any data or databases used by the Customer (or any person authorised by it or to whom any security method has been disclosed) in connection with the hosted Software.

9. The Customer shall indemnify COMMERCE DECISIONS against any cost, claim, expense and liability whatsoever as a result of any damage, infection or corruption to the hosted Software or the server and/or network upon which the hosted Software resides as a result of the use by the Customer (or any person authorised by it or to whom any security method has been disclosed) of the hosted Software.

10. In order to use the Software Hosting Service the Customer is responsible for a) using a supported internet browser (currently only Internet Explorer version 6.0 to version 9.0; however compatibility with later versions, and with other internet browsers such as Firefox, will be as advertised from time to time in the on-line or electronic installation manual or in release notes issued with future versions of the Software), b) obtaining access to the World Wide Web including any equipment that may be necessary to so do.

11. The Customer acknowledges, and consents to, the fact that the technical processing and transmission of the data handled via the Service may involve transmission over various networks not under the control of COMMERCE DECISIONS. COMMERCE DECISIONS reserves the right (without incurring any liability to the Customer) to terminate the Customer's access to the Software Hosting Service if the Customer withdraws consent to this clause at any time.

12. The Customer agrees to indemnify and hold COMMERCE DECISIONS harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising from any access provided to the third party by the Customer or authorised by the Customer, for the purposes of data upload/download and connection or attempted connection to the Software Hosting Service.

13. In recognition of the global nature of the World Wide Web, the Customer agrees to comply with all local laws regarding transmission or export of technical data to parties outside its country of operation.

14. The Customer acknowledges that it may store data on the server up to the limit agreed under the terms of the Agreement and where none is stated that data shall not exceed 10 Gigabyte in total. COMMERCE DECISIONS retain the right to remove data from the server where these limits are exceeded.

15. The Customer acknowledges that the data may be stored on servers managed by third party hosting service providers and that service provider personnel may access server hardware for maintenance purposes. COMMERCE DECISIONS will take reasonable steps to protect Customer data such as the use of data encryption and signing non-disclosure agreements with such contractors. COMMERCE DECISIONS do not accept liability for or indemnify against misuse of this data by such individuals or organisations.

16. COMMERCE DECISIONS will take reasonable steps to ensure resiliency in the service provision and that data is backed up nightly and where an event such as a computer crash occurs to activate failover services or restore data from the previous backup. COMMERCE DECISIONS accepts no liability should unrecoverable loss of data occur or for any action required by the Customer to restore any lost data.

17. The Customer agrees that it will not use the Software Hosting Service to a) upload any data or content that is unlawful or could be construed as threatening, defamatory, vulgar, libellous or obscene, b) upload or access any data on the site that it do not have right to do so under law or under contractual or fiduciary relationships c) upload any material that contains software viruses or computer programs designed to interrupt, damage, destroy or limit the functionality of the Software Hosting Service and/or the Software.

18. The Customer agrees that COMMERCE DECISIONS does not pre-screen or monitor any data that is loaded via the Software Hosting Service, but that COMMERCE DECISIONS has the right (but not the obligation) in their sole discretion to refuse further access to the Software Hosting Service where Customer fails to abide by any part of the Agreement (and shall incur no liability to the Customer where such right is exercised).

19. COMMERCE DECISIONS reserves the right at any time and from time to time to modify or patch the Software or to upgrade to a new version of the Software. COMMERCE DECISIONS will endeavour to provide reasonable prior

written notice ahead of any such changes, but reserves the right to make changes without prior notice. The Customer agrees that COMMERCE DECISIONS shall not be liable for any loss of functionality, data or capability as a result of such changes.

20. The Customer agrees that COMMERCE DECISIONS in its sole discretion, may (without incurring any liability to the Customer) terminate its account (or any user within that account thereof) or use of the Software Hosting Service, and remove and discard any data within the Software Hosting Service, for any reason, including, without limitation, if COMMERCE DECISIONS believes that the Customer has violated or acted inconsistently with the letter or spirit of the Agreement.

21. COMMERCE DECISIONS may also at its sole discretion and at any time, without liability for compensation to the Customer, discontinue providing the Software Hosting Service. In such circumstances COMMERCE DECISIONS will provide the Customer with not less than 30 days written notice of its intention to discontinue the Software Hosting Service and, entirely at its discretion, provide the Customer with a copy of the Software, a copy of the Customer's data where possible and a Software Licence that allows the Customer to install and use the Software for the remaining period of the Agreement.

22. The Customer acknowledges and agrees the Software Hosting Service and Software used in connection with the Software Hosting Service contain proprietary and confidential information that is protected by applicable intellectual property and copyright laws. The Customer agrees to abide by these laws and agrees to not disclose or grant access to any third party without the prior written consent of COMMERCE DECISIONS.

23. The Customer agrees not to create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code. The Customer agrees not to modify the Software in any manner or form. The foregoing provisions of this Clause 21.23 are not intended to exclude rights where the exclusion of such rights is prohibited by law.

PART 5 – CONSULTANCY SERVICE

In addition to Part 1, this Part 5 comprising Clause 22 shall apply to Consultancy Service.

22. Consultancy Service

1. The Consultancy Service commences from the date of acceptance by COMMERCE DECISIONS of the order therefore for the term specified in the Agreement or, in the absence of such specification, for one year.

2. The Customer and COMMERCE DECISIONS may agree the price basis upon which COMMERCE DECISIONS will supply the Consultancy Service. Unless otherwise agreed in writing, COMMERCE DECISIONS then current standard daily or hourly labour rates, plus travelling and other expenses shall apply.

3. For the purposes of Clause 22.1, a Business Day comprises 7.4 hours and a working half day is 3.7 hours. Consultants' time is charged in 15 minute increments but, where a Consultant attends the Customer's premises, any time recorded will be rounded up to the nearest half or whole day. Time may be charged whether the consultant is working at the Customer's premises or from any other location. Travel will be charged at cost (car mileage will be charged at 45 pence per mile (or such greater amount as may be notified to the Customer from time to time)). Subsistence will be recharged at cost. Travel time will be charged where reasonable to do so. Where the Customer is invoiced on a monthly or other regular basis, time will be rounded up to the nearest half day, with the balance (if any) carried forward as a credit for the Customer against the subsequent invoice.

4. So far as practicable, the Customer and COMMERCE DECISIONS shall agree the Scope of Work, the deliverables ("Deliverables") to be supplied by COMMERCE DECISIONS, the timescales within which the Consultancy Service is required, before commencement. COMMERCE DECISIONS shall determine which of its consultants or subcontractors shall provide the Consultancy Service. Unless otherwise agreed in writing, all agreed dates for the provision of Consultancy Service are non-cancellable and the Customer will pay for all consultants' scheduled time.

5. Subject to Clause 22.3, the Customer may at any time prior to the performance of the Consultancy Service reschedule all or some of the Consultancy Service. The Customer acknowledges that rescheduling of the Consultancy Service at short notice would make reallocation of COMMERCE DECISIONS' committed resources to alternative tasks impractical, as a result of which COMMERCE DECISIONS would suffer financial loss. Accordingly the Customer agrees that, for any notice of rescheduling received prior to the scheduled commencement of the Consultancy Service, COMMERCE DECISIONS shall have the right to charge, in addition to the agreed fee, a percentage of the fees for the rescheduled Consultancy Service in accordance with the following table:

Business Days before scheduled provision of Consultancy Service	COMMERCE DECISIONS entitled to charge % of fees for the rescheduled Consultancy Service.
-----------------------------------------------------------------	------------------------------------------------------------------------------------------

Service that a notice is received by COMMERCE DECISIONS	
5	50%
4	70%
3	80%
2	90%
1, or on the scheduled day	100%

COMMERCE DECISIONS will make reasonable attempts to meet the Customer's requested rescheduled dates, subject to availability of resources.

6. The Customer will make available free of charge and risk to COMMERCE DECISIONS at the times stated in the Agreement or otherwise in a timely manner all necessary personnel, materials, equipment and resources ("Customer Resources") reasonably required by COMMERCE DECISIONS to carry out the Consultancy Service.

7. The Customer represents and warrants that it has the full right, authority and licence to enter into the Agreement and to supply and disclose the Customer Resources and that any Customer Resource and its use by COMMERCE DECISIONS for the purpose of providing the Consultancy Service will not infringe the copyright or other intellectual property rights of any third party.

8. In the event of any failure or delay on the part of the Customer to supply such Customer Resources, or if the same are not in accordance with the Agreement or are not fit for the purpose provided, then COMMERCE DECISIONS shall within a reasonable time notify the Customer of any defect or delay, including particulars of the same and the Customer shall as soon as reasonably practicable and at its own expense supply replacement Customer Resources or make good such defect. In such circumstances, COMMERCE DECISIONS may: (i) extend the period for performance of the Consultancy Service by a reasonable time; and/or (ii) adjust the charges to meet any additional expenditure incurred by COMMERCE DECISIONS as a result of any defect or delay and the Customer shall pay such additional charges; and/or (iii) serve notice under Clause 9 and terminate the Agreement forthwith.

9. Nothing in the provision of the Consultancy Service shall render any employee of COMMERCE DECISIONS an employee of the Customer. COMMERCE DECISIONS shall use all reasonable endeavours to ensure that all consultants who are on the Customer's premises and/or have access to the Customer's computer system shall abide by policies relating to health and safety, computer integrity and confidentiality as are applicable to the Customer's own employees and have been notified in writing to COMMERCE DECISIONS.

10. Any and all intellectual property rights created in the course of carrying out the Consultancy Service shall belong to COMMERCE DECISIONS, but, subject to the Customer having paid all monies in respect of the Consultancy Service, and subject to any third party rights, the Customer shall have a non-exclusive, royalty free licence to use the intellectual property incorporated in a Deliverable for its own internal purposes only.

11. Where the Agreement requires COMMERCE DECISIONS to perform the Consultancy Service at the Customer's or third party premises, the Customer shall be responsible for arranging, in good time, all permits, licences and other permissions necessary to enable COMMERCE DECISIONS' employees, agents and representatives to gain access to, and perform the Consultancy Service at, such premises.