

Framework Schedule 6 (Order Form Template and Call-Off Schedules)

Order Form

CALL-OFF REFERENCE: **C306029**

THE BUYER: **NHS England**

BUYER ADDRESS **7-8 Wellington Place, Leeds, LS1 4AP**

THE SUPPLIER: **SoftwareONE UK Ltd**

SUPPLIER ADDRESS: **1 Chamberlain Square Cs, Birmingham, B3 3AX**

REGISTRATION NUMBER: **06629601**

DUNS NUMBER: **211283673**

SID4GOV ID: **N/A**

APPLICABLE FRAMEWORK CONTRACT

This Order Form is for the provision of the Call-Off Deliverables and dated 2nd July 2025.

It's issued under the Framework Contract with the reference number RM6098 for the provision of Technology Products & Associated Service.

CALL-OFF LOT(S):

Lot 3 Software

CALL-OFF INCORPORATED TERMS

The following documents are incorporated into this Call-Off Contract. Where numbers are missing, we are not using those schedules. If the documents conflict, the following order of precedence applies:

1. This Order Form, including the Call-Off Special Terms and Call-Off Special Schedules.
2. Joint Schedule 1 (Definitions and Interpretation) RM6098
3. Framework Special Terms

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4. The following Schedules in equal order of precedence:

- Joint Schedules for RM6098
 - Joint Schedule 2 (Variation Form)
 - Joint Schedule 3 (Insurance Requirements)
 - Joint Schedule 4 (Commercially Sensitive Information)
 - Joint Schedule 6 (Key Subcontractors)
 - Joint Schedule 10 (Rectification Plan)
 - Joint Schedule 11 (Processing Data)
- Call-Off Schedules for RM6098
 - Call-Off Schedule 5 (Pricing Details)
 - Call-Off Schedule 6 (ICT Services) including Annexes A to E

5. CCS Core Terms (version 3.0.11) as amended by the Framework Award Form

6. Joint Schedule 5 (Corporate Social Responsibility) RM6098

7. Annexes A-E to Call-Off Schedule 6 (ICT Services)

No other Supplier terms are part of the Call-Off Contract. That includes any terms written on the back of, added to this Order Form, or presented at the time of delivery.

CALL-OFF SPECIAL TERMS

The following Special Terms are incorporated into this Call-Off Contract:

Special Term 1: Cyber Security Requirements

The following wording shall be included as a new Clause 3.4 of the Core Terms of the Call-Off Contract:

The Supplier warrants and represents that it has complied with and throughout the Contract Period will continue to comply with the Cyber Security Requirements. The “**Cyber Security Requirements**” means:

- a) compliance with the data security and protection toolkit (DSP Toolkit), an online self-assessment tool that allows organisations to measure their performance against the National Data Guardian’s 10 data security standards and supports key requirements of the UK GDPR, which can be accessed from <https://www.dsptoolkit.nhs.uk/>, as may be amended or replaced by the Buyer or the Department of Health and Social Care from time to time;
- b) such requirements as are identified by the Buyer in its Security Policy (if applicable); and
- c) any other cyber security requirements relating to the Services notified to the Supplier by the Buyer from time to time;

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Special Term 2: Supplier Staff

The following wording shall be included as a new Clause 7.6 of the Core Terms of the Call-Off Contract:

- 7.6 Notwithstanding that Call-Off Schedule 9 (Security) has not been incorporated into this Order Form under the section headed "CALL-OFF INCORPORATED TERMS", paragraph 3.4.3 of Part B of Call-Off Schedule 9 (Security) shall apply to this Order Form in any event.

Special Term 3: Intellectual Property Rights (IPRs)

Clause 9.1 of the Core Terms of the Call-Off Contract – Delete this Clause and replace with:

- 9.1. Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to:

- receive and use the Deliverables
- make use of the deliverables provided by a Replacement Supplier
- develop and provide products and services to third parties

Special Term 4: Execution and Counterparts

The following wording shall be included as new Clause 36 of the Core Terms of the Call-Off Contract:

36 Execution and Counterparts

36.1 This Call-Off Contract may be executed in any number of counterparts (including by electronic transmission), each of which when executed shall constitute an original but all counterparts together shall constitute one and the same instrument.

36.2 Execution of this Call-Off Contract may be carried out in accordance with the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (SI 2016/696) and the Electronic Communications Act 2000. In the event each Party agrees to sign this Call-Off Contract by electronic signature (whatever form the electronic signature takes) it is confirmed that this method of signature is as conclusive of each Party's intention to be bound by this Call-Off Contract as if signed by each Party's manuscript signature. In such situation, this Call-Off Contract shall be formed on the date on which both Parties have electronically signed the Call-Off Contract as recorded in the Buyer's electronic contract management system.

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Special Term 5: Scope

The Buyer acknowledges and agrees that the Services that the Supplier is providing under the terms of this Agreement is that of a reseller of software. The reselling of the software is governed by the terms of this Agreement, however the use of the third-party product being purchased by the Buyer is instead governed by and subject to the product terms of the third party (the "Product Terms"). The Product Terms will set out any rights and obligations and any representations, warranties, liability and indemnity provisions offered by the third party to Buyer with respect to the products purchased. The Buyer shall enter into the Product Terms with the third party and agrees to be bound by, comply with and use the products in accordance with, such Product Terms.

The Buyer further acknowledges and agrees that Supplier does not assume any liability or provide any warranty or indemnity for third-party products. Accordingly, all third-party products purchased by the Buyer under this Agreement are provided on an "as is" and "as available" basis. Any document relating to such products that includes any warranty or indemnity from Supplier to Buyer or any user, or that includes language that may create a liability for Supplier, is null and void.

CALL-OFF START DATE: 01/07/2025**CALL-OFF EXPIRY DATE: 30/06/2027****CALL-OFF INITIAL PERIOD: 24 months****CALL-OFF OPTIONAL EXTENSION PERIOD 12 months****MINIMUM PERIOD OF NOTICE FOR WITHOUT REASON TERMINATION**
90 Days**CALL-OFF DELIVERABLES****LOCATION FOR DELIVERY**
[REDACTED]**DATES FOR DELIVERY**

Option A: Electronic confirmations to be delivered within one week of the purchase order being issued to the Supplier.

TESTING OF DELIVERABLES

Option A: None

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WARRANTY PERIOD

The warranty period for the purposes of Clause 3.1.2 of the Core Terms shall be as per the term of this Call Off Contract

MAXIMUM LIABILITY

The limitation of liability for this Call-Off Contract is stated in Clause 11.2 of the Core Terms.

The Estimated Year 1 Charges used to calculate liability in the first Contract Year is [REDACTED] Estimated Charges in the first 12 months of the Contract.

CALL-OFF CHARGES

Option B: See details in Call-Off Schedule 5 (Pricing Details)

All changes to the Charges must use procedures that are equivalent to those in Paragraphs 4, 5 and 6 (if used) in Framework Schedule 3 (Framework Prices)

The Total Call-Off Contract Value for the Initial Period is [REDACTED]
The Total Call-Off Contract Value for the Full Extended Term is £150,139.98

The Charges will not be impacted by any change to the Framework Prices. The Charges can only be changed by agreement in writing between the Buyer and the Supplier because of a Specific Change in Law or Benchmarking using Call-Off Schedule 16 (Benchmarking) where this is used

REIMBURSABLE EXPENSES

None

PAYMENT METHOD

BACS

BUYER'S INVOICE ADDRESS:

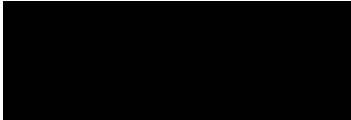
Any queries regarding outstanding payments should be directed to NHS England's Accounts Payable section by email at financialaccounts@nhs.net

Invoices should clearly quote the purchase order number, be addressed to NHS England, X24 Payables K005, PO Box 312, LEEDS LS11 1HP and be sent as a PDF attachment by email to the following email address; sbs.apinvoicing@nhs.net (one invoice per PDF) and emails must not exceed 10Mb and quote, 'X24 Invoice Scanning' in subject line or alternatively invoices can be sent via post to the above address.

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BUYER'S AUTHORISED REPRESENTATIVE



7-8 Wellington Place, Leeds, LS1 4AP

BUYER'S ENVIRONMENTAL POLICY

NHS England Social Value Charter available online at: [NHS England Social value charter](#)

&

NHS England's [Sustainable development management plan: summary report](#)

BUYER'S SECURITY POLICY

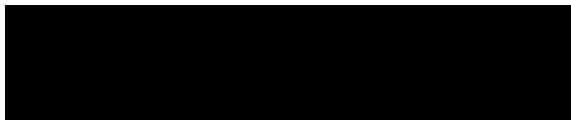
N/A

SUPPLIER'S AUTHORISED REPRESENTATIVE



1 Chamberlain Square Cs, Birmingham, B3 3AX

SUPPLIER'S CONTRACT MANAGER



1 Chamberlain Square Cs, Birmingham, B3 3AX

PROGRESS REPORT FREQUENCY

N/A

PROGRESS MEETING FREQUENCY

N/A

KEY STAFF

N/A

KEY SUBCONTRACTOR(S)

N/A

COMMERCIALLY SENSITIVE INFORMATION

Not applicable

SERVICE CREDITS

Not applicable

ADDITIONAL INSURANCES

Not applicable

Framework Ref: RM6098


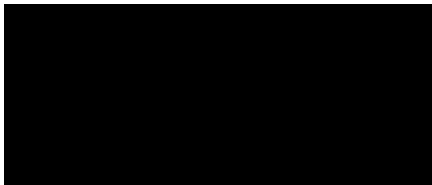
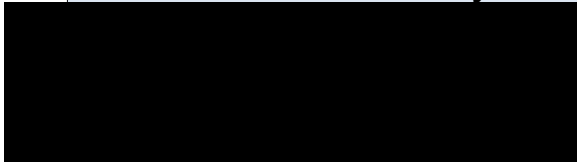
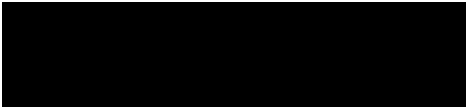

Project Version: v2.0

Model Version: v3.8

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GUARANTEE
Not applicable

SOCIAL VALUE COMMITMENT
Not applicable

For and on behalf of the Supplier:	
	
07/10/2025	07/10/2025
For and on behalf of the Buyer:	
	
Full Name:	
Job Title/Role:	
Date Signed:	15 July 2025

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Call-Off Schedule 5 (Pricing Details)

Quote GB-QUO-363575

Invoice Address

NHS ENGLAND
X24 PAYABLES K005
PO BOX 312
Leeds, LS11 1HP

Shipping Address

NHS ENGLAND
X24 PAYABLES K005
PO BOX 312
Leeds, LS11 1HP

Licence Address

NHS ENGLAND
X24 PAYABLES K005
PO BOX 312
Leeds, LS11 1HP

NHS ENGLAND
[REDACTED]

Pos. No.		Description	Manufacturer	Disc-Lev.	Format	Start Date	End Date	Version	Lic. Model	Lic. Metrics	Qty.	Unit Price	VAT %	Amount (GBP)
Subscription for 1st Year														
10	L131.21104.EN	Mouseflow Heat Mapping Tool						NON-SPEC/EN						
		Subscription for 1 Year						Non-Specific						
		OFFSPRING		1-1	SUB		TLP				1			
Subscription for 2nd Year														
20	L131.21104.EN	Mouseflow Heat Mapping Tool						NON-SPEC/EN						
		Subscription for 1 Year						Non-Specific						
		OFFSPRING		1-1	SUB		TLP				1			
												Total GBP excl. VAT		
												20.00% VAT		
												Total GBP incl. VAT		

Call-Off Schedule 6 (ICT Services)

1. Definitions

- 1.1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

"Buyer Property"	the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Contract;
"Buyer Software"	any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;
"Buyer System"	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables;
"Commercial off the shelf Software" or "COTS Software"	Non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms
"Core Network"	the provision of any shared central core network capability forming part of the overall Services delivered to the Buyer, which is not specific or exclusive to a specific Call-Off Contract, and excludes any configuration information specifically associated with a specific Call-Off Contract;
"Defect"	any of the following: a) any error, damage or defect in the manufacturing of a Deliverable; or b) any error or failure of code within the Software which causes a Deliverable to

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malfunction or to produce unintelligible or incorrect results; or

- c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract; or
- d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;

"Emergency Maintenance"

ad hoc and unplanned maintenance provided by the Supplier where either Party reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault;

"ICT Environment"

the Buyer System and the Supplier System;

"Licensed Software"

all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Buyer for the purposes of or pursuant to this Call Off Contract, including any COTS Software;

"Maintenance Schedule"

has the meaning given to it in paragraph 8 of this Schedule;

"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;

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"New Release"	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
"Open Source Software"	computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;
"Operating Environment"	means the Buyer System and any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> the Deliverables are (or are to be) provided; or the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; or where any part of the Supplier System is situated;
"Permitted Maintenance"	has the meaning given to it in paragraph 8.2 of this Schedule;
"Quality Plans"	has the meaning given to it in paragraph 6.1 of this Schedule;
"Sites"	has the meaning given to it in Joint Schedule 1(Definitions), and for the purposes of this Call Off Schedule shall also include any premises from, to or at which physical interface with the Buyer System takes place;
"Software"	Specially Written Software COTS Software and non-COTS Supplier and third party Software;
"Software Supporting Materials"	has the meaning given to it in paragraph 9.1 of this Schedule;
"Source Code"	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts,

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	technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Specially Written Software"	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;
"Supplier System"	the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);

2. When this Schedule should be used

- 2.1. This Schedule is designed to provide additional provisions necessary to facilitate the provision of ICT Services which are part of the Deliverables.

3. Buyer due diligence requirements

- 3.1. The Supplier shall satisfy itself of all relevant details, including but not limited to, details relating to the following;
 - 3.1.1. suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Start Date) future Operating Environment;
 - 3.1.2. operating processes and procedures and the working methods of the Buyer;
 - 3.1.3. ownership, functionality, capacity, condition and suitability for use in the provision of the Deliverables of the Buyer Assets; and
 - 3.1.4. existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the

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Supplier will require the benefit of for the provision of the Deliverables.

3.2. The Supplier confirms that it has advised the Buyer in writing of:

- 3.2.1. each aspect, if any, of the Operating Environment that is not suitable for the provision of the ICT Services;
- 3.2.2. the actions needed to remedy each such unsuitable aspect; and
- 3.2.3. a timetable for and the costs of those actions.

4. Licensed software warranty

4.1. The Supplier represents and warrants that:

- 4.1.1. it has and shall continue to have all necessary rights in and to the Licensed Software made available by the Supplier (and/or any Sub-Contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Deliverables by the Buyer;
- 4.1.2. all components of the Specially Written Software shall:
 - 4.1.2.1. be free from material design and programming errors;
 - 4.1.2.2. perform in all material respects in accordance with the relevant specifications contained in Call Off Schedule 14 (Service Levels) and Documentation; and
 - 4.1.2.3. not infringe any IPR.

5. Provision of ICT Services

5.1. The Supplier shall:

- 5.1.1. ensure that the release of any new COTS Software in which the Supplier owns the IPR, or upgrade to any Software in which the Supplier owns the IPR complies with the interface requirements of the Buyer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Buyer three (3) Months before the release of any new COTS Software or Upgrade;
- 5.1.2. ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- 5.1.3. ensure that the Supplier System will be free of all encumbrances;
- 5.1.4. ensure that the Deliverables are fully compatible with any Buyer Software, Buyer System, or otherwise used by the Supplier in connection with this Contract;

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- 5.1.5. minimise any disruption to the Services and the ICT Environment and/or the Buyer's operations when providing the Deliverables;

6. Standards and Quality Requirements

- 6.1. The Supplier shall develop, in the timescales specified in the Order Form, quality plans that ensure that all aspects of the Deliverables are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 6.2. The Supplier shall seek Approval from the Buyer (not be unreasonably withheld or delayed) of the Quality Plans before implementing them. Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Deliverables are provided to the standard required by this Contract.
- 6.3. Following the approval of the Quality Plans, the Supplier shall provide all Deliverables in accordance with the Quality Plans.
- 6.4. The Supplier shall ensure that the Supplier Personnel shall at all times during the Call Off Contract Period:
 - 6.4.1. be appropriately experienced, qualified and trained to supply the Deliverables in accordance with this Contract;
 - 6.4.2. apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Deliverables; and
 - 6.4.3. obey all lawful instructions and reasonable directions of the Buyer (including, if so required by the Buyer, the ICT Policy) and provide the Deliverables to the reasonable satisfaction of the Buyer.

7. ICT Audit

- 7.1. The Supplier shall allow any auditor access to the Supplier premises to:
 - 7.1.1. inspect the ICT Environment and the wider service delivery environment (or any part of them);
 - 7.1.2. review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
 - 7.1.3. review the Supplier's quality management systems including all relevant Quality Plans.

8. Maintenance of the ICT Environment

- 8.1. If specified by the Buyer in the Order Form, the Supplier shall create and maintain a rolling schedule of planned maintenance to the ICT Environment

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- ("Maintenance Schedule") and make it available to the Buyer for Approval in accordance with the timetable and instructions specified by the Buyer.
- 8.2. Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (other than to the Core Network) (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
 - 8.3. The Supplier shall give as much notice as is reasonably practicable to the Buyer prior to carrying out any Emergency Maintenance, including to the Core Network.
 - 8.4. The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Deliverables.

9. Intellectual Property Rights in ICT**9.1. Assignments granted by the Supplier: Specially Written Software**

- 9.1.1. The Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Buyer with full guarantee (or shall procure assignment to the Buyer), title to and all rights and interest in the Specially Written Software together with and including:
 - 9.1.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software; and
 - 9.1.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "**Software Supporting Materials**").
- 9.1.2. The Supplier shall:
 - 9.1.2.1. inform the Buyer of all Specially Written Software or New IPRs that are a modification, customisation, configuration or enhancement to any COTS Software;
 - 9.1.2.2. deliver to the Buyer the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably

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acceptable to the Buyer and the Buyer shall become the owner of such media upon receipt; and

9.1.2.3. without prejudice to paragraph 9.1.2.2, provide full details to the Buyer of any of the Supplier's Existing IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially Written Software or New IPR and the Supplier hereby grants to the Buyer and shall procure that any relevant third party licensor shall grant to the Buyer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit such Supplier's Existing IPRs and Third Party IPRs to the extent that it is necessary to enable the Buyer to obtain the full benefits of ownership of the Specially Written Software and New IPRs.

9.1.3. The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and New IPRs are properly transferred to the Buyer.

9.2. Licences for non-COTS IPR from the Supplier and third parties to the Buyer

9.2.1. Unless the Buyer gives its Approval the Supplier must not use any:

- a) of its own Existing IPR that is not COTS Software;
- b) third party software that is not COTS Software

9.2.2. Where the Buyer Approves the use of the Supplier's Existing IPR that is not COTS Software the Supplier shall grants to the Buyer a perpetual, royalty-free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Call Off Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.

9.2.3. Where the Buyer Approves the use of third party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph 9.2.2. If the Supplier cannot obtain such a licence for the Buyer it shall:

9.2.3.1. notify the Buyer in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Supplier could seek to use; and

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9.2.3.2. only use such third party IPR as referred to at paragraph 9.2.3.1 if the Buyer Approves the terms of the licence from the relevant third party.

9.2.4. Where the Supplier is unable to provide a license to the Supplier's Existing IPR in accordance with Paragraph 9.2.2 above, it must meet the requirement by making use of COTS Software or Specially Written Software.

9.2.5. The Supplier may terminate a licence granted under paragraph 9.2.1 by giving at least thirty (30) days' notice in writing if there is an Authority Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.

9.3. Licenses for COTS Software by the Supplier and third parties to the Buyer

9.3.1. The Supplier shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the Buyer on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.2. Where the Supplier owns the COTS Software it shall make available the COTS software to a Replacement Supplier at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.3. Where a third party is the owner of COTS Software licensed in accordance with this Paragraph 9.3 the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licensee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.4. The Supplier shall notify the Buyer within seven (7) days of becoming aware of any COTS Software which in the next thirty-six (36) months:

9.3.4.1. will no longer be maintained or supported by the developer;
or

9.3.4.2. will no longer be made commercially available

9.4. Buyer's right to assign/novate licences

9.4.1. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to paragraph 9.2 (to:

9.4.1.1. a Central Government Body; or

9.4.1.2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.

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- 9.4.2. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in paragraph 9.2.

9.5. Licence granted by the Buyer

- 9.5.1. The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Buyer Software and the Specially Written Software solely to the extent necessary for providing the Deliverables in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 15 (Confidentiality).

9.6. Open Source Publication

- 9.6.1. Unless the Buyer otherwise agrees in advance in writing (and subject to paragraph 9.6.3) all Specially Written Software and computer program elements of New IPR shall be created in a format, or able to be converted (in which case the Supplier shall also provide the converted format to the Buyer) into a format, which is:

9.6.1.1. suitable for publication by the Buyer as Open Source; and

9.6.1.2. based on Open Standards (where applicable),

and the Buyer may, at its sole discretion, publish the same as Open Source.

- 9.6.2. The Supplier hereby warrants that the Specially Written Software and the New IPR:

9.6.2.1. are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Buyer will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software, New IPRs or the Buyer System;

9.6.2.2. have been developed using reasonable endeavours to ensure that their publication by the Buyer shall not cause any harm or damage to any party using them;

9.6.2.3. do not contain any material which would bring the Buyer into disrepute;

9.6.2.4. can be published as Open Source without breaching the rights of any third party;

9.6.2.5. will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the date notified by the Buyer to the Supplier; and

9.6.2.6. do not contain any Malicious Software.

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9.6.3. Where the Buyer has Approved a request by the Supplier for any part of the Specially Written Software or New IPRs to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Existing IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:

9.6.3.1. as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open Source publication; and

9.6.3.2. include in the written details and information about the impact that inclusion of such IPRs or Deliverables based on such IPRs, will have on any other Specially Written Software and/or New IPRs and the Buyer's ability to publish such other items or Deliverables as Open Source.

9.7. Malicious Software

9.7.1. The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.

9.7.2. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.

9.7.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of paragraph 9.7.2 shall be borne by the Parties as follows:

9.7.3.1. by the Supplier, where the Malicious Software originates from the Supplier Software, the third party Software supplied by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and

9.7.3.2. by the Buyer, if the Malicious Software originates from the Buyer Software or the Buyer Data (whilst the Buyer Data was under the control of the Buyer).

10. Supplier-Furnished Terms**10.1. Software Licence Terms**

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10.1.1. Terms for licensing of non-COTS third party software in accordance with Paragraph 9.2.3 are detailed in Annex A of this Call Off Schedule 6.

10.1.2. Terms for licensing of COTS software in accordance with Paragraph 9.3 are detailed in Annex B of this Call Off Schedule 6.

10.2. Software Support & Maintenance Terms

10.2.1. Additional terms for provision of Software Support & Maintenance Services are detailed in Annex C of this Call Off Schedule 6.

10.3. Software as a Service Terms

10.3.1. Additional terms for provision of a Software as a Service solution are detailed in Annex D of this Call Off Schedule 6.

10.4. As a Service Terms

10.4.1. Additional terms for provision of a devices, utility and consumption models for technology infrastructure generally described as “As a Service” solutions are detailed in Annex E to this Call-Off Schedule 6.

ANNEX A

Non-COTS Third Party Software Licensing Terms

ANNEX B

COTS Licensing Terms

Terms of use

Updated: June 07, 2022

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1. Definitions

Whenever used in these Terms and Conditions ("Agreement"), the following terms will have the following specified meanings:

"Account" refers to the Customer's account whereby Customer registers for and accesses the Service.

"Brand Features" means any trade names, trademarks, servicemarks, logos, domain names, trade dress or other distinctive items that represent Customer or Mouseflow, respectively. Mouseflow® is a duly registered trademark and property of Mouseflow.

"Customer" means you, the individual or legal entity that you represent, subscriber of one of Mouseflow plans, including those in Trial, Free or Custom plans.

"Customer Data" means anonymous, aggregated data concerning the characteristics and activities of visitors of the Customers' Website(s) collected by the MFTC and MFRS, forwarded to the Servers, and analyzed by the Processing Software. The parties agree and understand that Customer intends to use the Service in a way that only anonymous information is collected from website visitors, so that no information collected can be used to identify individual website visitors' PII.

"Documentation" means any documentation related to the Processing Software, including that which is available online or otherwise.

"Enterprise Plan" refers to a plan that exceeds the capacity, features, functionality or limitations of a Standard Plan or to an existing separate contract between Customer and Mouseflow.

"Free or Custom Plan" means a restricted Account which includes limited features and or functionality, provided at no cost to collect Customer Data derived from 500 sessions per month.

"Knowledge Base" means the pages on Mouseflow website which have information and documentation concerning the Software (<https://help.mouseflow.com>).

"MFRS" means the proprietary Mouseflow Recording Script, which is included in the MFTC for the purpose of collecting Customer Data, together with any fixes, updates, and upgrades.

"MFTC" means the proprietary Mouseflow Tracking Code, which is installed by the Customer on a Website for the purpose of collecting Customer Data, together with any fixes, updates, and upgrades.

"Mouseflow" means the company Mouseflow ApS registered in Denmark, Europe.

"Page View" is a unit of measurement for usage of the Service. A Page View occurs each time the MFTC or MFRS is executed on a web page accessed by a Visitor.

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“Paid Plan” refers to an Account which includes access to additional features and/or functionality, sessions per month, or storage based on a Subscription to a Standard Plan, Enterprise Plan or Agency Plan.

“PII” means Personally Identifiable Information which relates to any data that identifies or could potentially identify an individual.

“Processing Software” or “Software” means the proprietary Mouseflow server software, together with any fixes, updates, and upgrades, which process, analyze, and store the Customer Data.

“Proprietary Rights” means, without limitation, any patent, copyright, trademark, trade secret, design, database right, business name, domain name, layout, design or other intellectual property or Proprietary Right, whether registered or not and whether registerable or not, as may exist anywhere in the world.

“Renewal Date” means the annual or monthly date a Paid Plan is renewed.

“Recorded Session” or “Session” is a unit of measurement which consists of a plurality of Page Views during a single browsing session on the Website. A session is started when a user arrives on the Website and navigates to a page which has the MFTC on it, continuing until terminated due to (a) thirty minutes of inactivity, (b) the session reaching a threshold of 100 Page Views, (c) the user closing their browser window or clearing their cookies, or (d) the user navigating to a page which does not have the MFTC on it and, afterwards, never navigating to any other page(s) which has/have the MFTC on it.

“Report” means the analysis derived from Customer Data and made available through the Account. The charts, graphs, and statistics contained in a Report vary based on the type of account and plan.

“Servers” means the technological infrastructure controlled by Mouseflow (or its subsidiaries and/or subcontractors) upon which the Processing Software operates and the Customer Data and MFRS are stored.

“Service” means the facilities to analyze or parse Customer Data, including Recorded Sessions, from a Website owned, controlled, or operated by Customer.

“Software” means the MFTC, MFRS, and Processing Software.

“Standard Plan” means a plan listed at <https://mouseflow.com/pricing>, except for an Enterprise and Agency Plan. The current standard plans are “Starter”, “Growth”, “Business”, and “Pro”.

“Subscription” means the specific features, pricing, and attributes agreed upon by Customer and Mouseflow for the provision of the Software or Service or set forth in a separate contract.

“Term” has the meaning set forth in the Section labelled “Term and Termination” on this Agreement.

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“Trial Plan” refers to restricted Account which includes limited features/functionality, provided at no cost for a period of fourteen (14) days to collect Customer Data derived from a one-time sample of 500 sessions.

“Visitor” means the person who access the Customer Website where Mouseflow is installed and capturing information.

“Website” means a collection of one or more web pages that Customer owns and controls or operates or authorizes a third party to control or operate on its behalf.

2. Purpose

Customer engages Mouseflow to provide the Service that uses Software to process, analyze, and store Customer Data on behalf of Customer.

3. Trial

Customer may sign up for a Trial Plan for a period of fourteen (14) days. Once the Trial Plan ends, the Customer can decide to transition the Account to the Free or Limited Plan, unless upgraded to a Paid Plan. Mouseflow reserves the right to cancel, terminate, or modify a Free or Limited or Trial Plan for any or no reason and at any time.

4. Billing

For a Paid Plan, Customer will be billed automatically via credit card, PayPal, or invoice, depending on the Subscription pursuant to an agreed-upon billing cycle; otherwise, monthly.

The bill amount shall include the applicable fees for the Subscription, together with any extraordinary costs that are incurred as a result of high traffic or data transfer related to the Customer’s use of the Software.

Mouseflow shall have the sole right to determine whether such extraordinary costs are billed to Customer and, if so, the rate which shall be billed (to be no higher than twenty percent (20%) above cost).

If the Customer is invoiced, invoices will be sent to the Customer at the beginning of the billing cycle via electronic mail and must be paid within thirty (30) days of receipt. A late fee will be charged at a rate of one percent (1%) per month on undisputed overdue amounts. If payments on undisputed amounts are not received within thirty

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(30) days, Mouseflow reserves the right to suspend access to the Service. If payments on undisputed amounts are not received within sixty (60) days, Mouseflow reserves the right to disable the MFTC or MFRS and/or permanently delete the Customer Data.

5. Term and Termination

The Agreement will take effect as of the date the Account is created and will continue in full force and effect until deleted.

This Agreement will apply to the Software and Services provided on or after the Account creation date, and if Mouseflow agrees to provide the Software and Services after the end of a Term, this Agreement shall apply to such Software and Services.

Without prejudice to any other rights, Mouseflow may terminate Customer's Subscription and the licenses contained herein (a) for any or no reason and at anytime or (b) if Customer fails to comply with these Terms and Conditions. For a [Standard Plan](#), Customer may cancel the Subscription at any time and with no penalty at <https://app.mouseflow.com/account/>.

For an Enterprise Plan, Customer may cancel its Subscription upon thirty (30) days written notice to Mouseflow before the Renewal Date, unless otherwise specified in a separate contract between the parties. If the 30th day falls after the date of renewal of a Term, the termination will take effect upon completion of the active Term. Otherwise, the termination will take effect upon the expiration of the 30th day and the completion of the then-current billing cycle.

Upon termination of Subscription, Customer's right to access the Service shall automatically terminate and Customer must destroy all originals and copies of the Software, and, upon request, certify thereto in writing to Mouseflow within three (3) business days. In the event of termination of the Subscription, (a) Customer shall not be entitled to any refund(s) or credit(s) (b) any outstanding balance for Service rendered will be immediately due and payable in full. For the Enterprise Plans, if the termination date falls in a new billing cycle, Customer must pay all fees due to the renewal of the Subscription regardless of the fact Customer did or did not use the Services during such period and (c) Customer Data will no longer be available to Customer through the Software and Service; however, Customer may retain copies of the Customer Data and Reports. If Customer fails to remove MFTC or MFRS from Customer's Website(s) after three (3) business days, Mouseflow may alter the MFRS code to include an alert box stating that Customer's Subscription has been terminated.

6. Installation

In order to use the Service, Customer must install the MFTC on its Website(s). Customer agrees to modify the MFTC, if directed by Mouseflow, and also grants Mouseflow permission to carry out such modification(s) to ensure compatibility with the Service. Mouseflow shall not be liable for any delays in Customer's access to its Account or errors in Customer Data related to such event.

If required by law, Customer agrees to post a clear and conspicuous notice and statement, with the following or equivalent language, in the privacy policy or otherwise on its website: "This website uses Mouseflow (<https://mouseflow.com>), a third-party analytics tool, to track page content and click/touch, movement, scroll, and keystroke activity. You can opt-out at: <https://mouseflow.com/opt-out/>".

Mouseflow agrees to maintain an opt-out process on its website, which allows website visitors to prohibit tracking of their activity on the Customer website, as long as the Visitor's browser allows third-party cookies; otherwise such feature might be impaired.

Customer agrees to exclude any PII, confidential, proprietary, or sensitive information from capture, as necessary, described in the links to the relevant articles below and (i) accepts full responsibility and liability of ensuring such information is adequately and completely excluded, (ii) will indemnify, defend and hold Mouseflow harmless for all claims, damages, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or in connection with an alleged or actual failure to meet this obligation and (iii) Customer warrants that it will designate skilled employees to perform the proper installation and use of the Software.

If Customer discovers that PII has been collected it will immediately and permanently delete such information from within the Mouseflow dashboard upon discovery.

DISCLAIMER: CUSTOMER ACKNOWLEDGES THAT MOUSEFLOW HAS PROVIDED ALL NECESSARY INFORMATION TO SECURE THE RECORDINGS, PREVENTING THE COLLECTION OF PII AND SENSITIVE DATA. Such information can be found in the Knowledge Base as, among others, the articles below:

[Excluding and Whitelisting content via Website Settings](#)

[Excluding Content via Code](#)

[Excluding and Whitelisting content via the Visual Privacy Tool](#)

7. Sensitive Data

Customer must comply with all applicable laws (including, but not limited to, privacy and data security laws) and represents and warrants that it will not use the Service or the Software to violate such laws.

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Both parties agree to (i) notify the other party if it discovers that PII and/or sensitive data has been collected and (ii) immediately and permanently delete such PII and/or sensitive data upon discovery or written request from the other party.

8. Account and Security

Customer is responsible for safeguarding the confidentiality of login credentials issued by Mouseflow and for any use or misuse of the Service resulting from unauthorized access. Customer agrees to notify Mouseflow immediately in the event of a security breach or unauthorized access to the Account or Service. Mouseflow may, from time to time, login to Customer's Account to make improvements or troubleshoot technical issues. Customer hereby consents to such access.

9. Nonexclusive License

Mouseflow hereby grants Customer a limited, revocable, nonexclusive, nonsublicensable license to install, copy, and use the MFTC or MFRS on one or more Customer Website as necessary to use the Service.

Customer may access, view, and download Customer Data and Reports at mouseflow.com (or any other such URL that Mouseflow may provide from time to time), and may share such Customer Data and Reports with its employees, contractors, agents (e.g. accountants, attorneys, public relations, advertising and marketing agencies, and the like) and customers.

Except as otherwise provided in this Agreement, Customer neither will nor will allow any third party to (i) copy, modify, adapt, translate, or otherwise create derivative works of the Software or the Documentation; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the Software, except as expressly permitted by the law in effect in the jurisdiction in which Customer is located; (iii) rent, lease, sell, assign or otherwise transfer rights in or to the MFTC, MFRS, the Account, the Software, the Documentation, or the Service; (ii) remove any proprietary notices or labels on the Software or placed by the Service; or (iii) use, post, transmit or introduce any device, software, or routine which interferes or attempts to interfere with the operation of the Service or the Software.

Customer will use the Account, Software and Service solely for its internal use, and will not make the Account, Software or Service available for access by other parties, application service providers, or service bureaus, except that Customer may grant access to its employees and contractors.

Customer will comply with all applicable laws and regulations in Customer's use of and access to the Account, Documentation, Reports, Service, and Software.

10. Confidentiality

“Confidential Information” includes any proprietary data or other information disclosed by one party (“Disclosing Party”) to the other (“Recipient”) in writing and marked “confidential” or disclosed orally and, within five (5) business days, reduced to writing and marked “confidential”. Notwithstanding the foregoing, Confidential Information will not include any information that: (a) is or becomes public knowledge other than as a result of a breach of this Agreement or other obligation of confidentiality; (b) the Recipient can show was in its unrestricted possession, known to it before the date of this Agreement or independently developed by it before being disclosed under this Agreement; (c) is disclosed or made available to the Recipient by a third party other than in breach of this Agreement or other obligation of confidentiality; or (d) is disclosed by the Recipient with the prior written permission of the Disclosing Party.

Neither party will use or disclose the other party’s Confidential Information without the other’s prior written consent except for the purpose of performing its obligations under this Agreement or if required by law enforcement personnel, regulation, court order, or administrative agency, in which case, the Recipient must give the Disclosing Party as much notice as is reasonably practicable (and permitted by law) prior to disclosing such information.

Upon termination of Customer’s Subscription, the parties will promptly either return or destroy all Confidential Information and, upon request, provide written certification of such.

11. Information Rights and Publicity

Except as permitted herein, Mouseflow will not share information associated with Customer or Customer’s Website(s) with any third parties unless Mouseflow (i) has Customer’s prior written consent; (ii) concludes that disclosure is required by law or has a good faith belief that disclosure is reasonably necessary to protect the rights, property, or safety of Mouseflow, its users, or the public; or (iii) provides such information in certain limited circumstances to third parties to carry out tasks on Mouseflow’s behalf (e.g. billing, data storage, or support) with strict restrictions intended to prevent the data from being used or shared except as directed by Mouseflow.

12. Warranty and Indemnification

Mouseflow warrants that: (i) each of its employees has the proper skill, training and background necessary to accomplish their assigned tasks; (ii) all Services will be performed in a competent and professional manner, by qualified personnel. Customer will indemnify, defend and hold Mouseflow harmless for all claims, damages, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys' fees) that arise out of or in connection with Customer's use of the Software or Services, termination, or failure to comply with this Agreement.

Subject to the applicable statute of limitations, the indemnity set forth in this Section 12 will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination.

13. Disclaimer of Warranties

The information and services included in or available through the Service, including the Reports, may include inaccuracies or typographical errors. Mouseflow may make improvements and/or changes to the Account, Service or Software at any time, with or without notice. Mouseflow does not represent or warrant that the Account, Service, or Software will be uninterrupted or error-free, that defects will be corrected, or that the Service, Software, or Server is free of viruses or other harmful components.

Mouseflow does not warrant or represent that the use of the Service or the Reports will be correct, accurate, timely or otherwise reliable. Customer specifically agrees that Mouseflow and its subsidiaries shall not be responsible for unauthorized access to or alteration of the Customer Data or data from Customer's Website(s).

THE SERVICE, THE SOFTWARE, DOCUMENTATION AND REPORTS ARE PROVIDED "AS IS" AND THERE ARE NO WARRANTIES, CLAIMS OR REPRESENTATIONS MADE BY MOUSEFLOW AND/OR ITS SUBSIDIARIES AND AFFILIATES, EITHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SERVICE, THE SOFTWARE, THE DOCUMENTATION OR REPORTS, INCLUDING WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE. MOUSEFLOW DOES NOT WARRANT THAT THE SERVICE, THE SOFTWARE OR REPORTS WILL MEET CUSTOMER'S NEEDS OR BE FREE FROM ERRORS, OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS TERMS AND CONDITIONS AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE SERVICE.

14. Limitation on Liability

EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS CONTAINED IN SECTION 12 TITLED "WARRANTY AND INDEMNIFICATION" ABOVE WITH RESPECT TO CLAIMS BY THIRD PARTIES, NO PARTY OR ANY OF ITS SUBSIDIARIES AND/OR AFFILIATES OR EMPLOYEES SHALL BE CUMULATIVELY LIABLE TO THE OTHER FOR (A) ANY LOSS OR DAMAGE IN EXCESS OF \$250, OR (B) ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST DATA COLLECTED THROUGH THE SERVICE), OR INCIDENTAL DAMAGES, WHETHER BASED ON A CLAIM OR ACTION BASED ON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION, OR OTHERWISE, EVEN IF SUCH PARTY AND/OR ITS SUBSIDIARIES OR AFFILIATES OR EMPLOYEES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES OR COUNTRIES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES IN SOME INSTANCES, AND TO THAT EXTENT, SUCH LIMITATIONS OR EXCLUSIONS DO NOT APPLY.

15. Proprietary Rights

The Service, which includes, but is not limited to, the Account and Software, together with all intellectual property rights is, and shall remain, the property of Mouseflow (and its subsidiaries).

All rights not expressly granted to Customer in this Agreement are hereby exclusively reserved and retained by Mouseflow and its licensors without restriction, including, without limitation, Mouseflow's (and its subsidiaries') right to sole ownership of the Software and Documentation.

Without limiting the generality of the foregoing, Customer agrees not to (and to not allow any Third Party to): (a) sublicense, distribute, or use the Service or the Software outside of the scope of the License granted herein; (b) copy, modify, adapt, translate, prepare derivative works from, reverse engineer, disassemble, or decompile the Software or Service or otherwise attempt to discover any source code or trade secrets related to the Software of Service; (c) use the Brand Features or any copyright or other Proprietary Rights associated with the Software or the Service for any purpose without the express written consent of Mouseflow; (d) register, attempt to register, or assist anyone else in creating or registering any Brand Feature, copyright, or other proprietary right associated with Mouseflow (or its subsidiaries) ;

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or (e) remove, obscure, or alter any notice of copyright, trademark, or other proprietary right appearing in or on any item included with the Software or the Service.

16. Applicable Law and Forum

This Agreement shall be governed and construed in accordance with the laws of Denmark without regard to the conflicts of laws or principles thereof.

The parties will resolve any disputes in the courts located in Denmark, to whose exclusive jurisdiction and venue they irrevocably submit.

17. Notice

Mouseflow may provide any notice to Customer under these Terms and Conditions by: (i) posting a notice on the Service dashboard; or (ii) email sent to the Account owner's registered email address. Such notices will be effective upon the moment Customer read the posting or Mouseflow sends the email.

Customer may provide any notice to Mouseflow under these Terms and Conditions by email sent to legal@mouseflow.com. Such notices will be effective upon the moment Customer receives a confirmation receipt by an automated email response.

18. Nonwaiver

Any failure by a party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement, or to exercise any right or remedy under this Agreement, will not be construed as a waiver or relinquishment of any right to assert or rely upon any such provision, right, or remedy in that or any other instance.

19. Entire Agreement

This Agreement constitutes the entire agreement between the parties concerning its subject matter, and supersedes all prior agreements and representations between the parties.

20. Modifications

Mouseflow reserves the right to change or modify the Service or this Agreement at any time and with or without notice. Customer is responsible for regularly reviewing and being aware of such changes.

21. Severability

If any provision of this Agreement is invalid or unenforceable under any statute or rule of law, such provision shall be reformed to the extent necessary to make it enforceable to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

22. Headings

Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement.

23. Assignment

Customer may not assign or otherwise transfer any of its rights hereunder without prior written consent from a duly authorized representative of Mouseflow; any such attempt is void. Except Customer may transfer this Agreement to an affiliated company or in the case of a merger or sale of all or substantially all of its assets or ownership.

24. Survival

Sections 5, 7, 10, 12-16 shall survive termination of Customer's subscription.

25. Force Majeure

Mouseflow shall be excused from performance hereunder to the extent that performance is prevented, delayed, or obstructed by causes beyond its reasonable control.

26. Independent Contractors

The relationship between Mouseflow and Customer is not one of partnership, but independent contractors.

ANNEX C

Software Support & Maintenance Terms

ANNEX D

Software as a Service Terms

Annex E

As a Service Terms

Joint Schedule 11 (Processing Data)

Definitions

1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

“Processor Personnel” all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under a Contract;

Status of the Controller

2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:
 - (a) “Controller” in respect of the other Party who is “Processor”;
 - (b) “Processor” in respect of the other Party who is “Controller”;
 - (c) “Joint Controller” with the other Party;
 - (d) “Independent Controller” of the Personal Data where the other Party is also “Controller”;

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in respect of certain Personal Data under a Contract and shall specify in Annex 1 (*Processing Personal Data*) which scenario they think shall apply in each situation.

Where one Party is Controller and the other Party its Processor

3. Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller and may not otherwise be determined by the Processor.
4. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
5. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
 - (a) a systematic description of the envisaged Processing and the purpose of the Processing;
 - (b) an assessment of the necessity and proportionality of the Processing in relation to the Deliverables;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
6. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
 - (a) Process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*) and shall not Process the Personal Data for any other purpose, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, including in the case of the Supplier the measures set out in Clause 14.3 of the Core Terms, which the Controller may reasonably reject. In the event of the Controller reasonably rejecting Protection Measures put in place by the Processor, the Processor must propose alternative Protective Measures to the satisfaction of the Controller. Failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures. Protective Measures must take 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;
 - (c) ensure that:

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- (i) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Joint Schedule 11, Clauses 14 (*Data protection*), 15 (*What you must keep confidential*) and 16 (*When you can share information*) of the Core Terms;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) not transfer, Process, or otherwise make available for Processing, Personal Data outside of the UK unless the prior written consent of the Controller has been obtained (such consent may be withheld or subject to such conditions as the Customer considers fit at the Customer's absolute discretion) and the following conditions are fulfilled:
 - (i) the destination country has been recognised as adequate by the UK Government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018;
 - (ii) Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 DPA 2018) as determined by the Controller;
 - (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (v) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data;

if any of the mechanisms relied on under paragraph 6(d) in respect of any transfers of Personal Data by the Processor at any time ceases to be valid, the Processor shall, if possible, implement an alternative mechanism to ensure compliance with the Data

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Protection Legislation. If no alternative mechanism is available, the Controller and the Processor shall work together in good faith to determine the appropriate measures to be taken, taking into account any relevant guidance and accepted good industry practice. The Controller reserves the right to require the Processor to cease any affected transfers if no alternative mechanism to ensure compliance with Data Protection Legislation is reasonably available; and

- (e) at the written direction, and absolute discretion, of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
7. Subject to paragraph 8 of this Joint Schedule 11, the Processor shall notify the Controller immediately if in relation to Processing Personal Data under or in connection with the Contract it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
8. The Processor's obligation to notify under paragraph 7 of this Joint Schedule 11 shall include the provision of further information to the Controller, as details become available.
9. Taking into account the nature of the Processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 7 of this Joint Schedule 11 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

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- (d) assistance as requested by the Controller following any Data Loss Event; and/or
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
10. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Joint Schedule 11. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the Processing is not occasional;
 - (b) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - (c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
11. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
12. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
13. Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must:
- (a) notify the Controller in writing of the intended Subprocessor and Processing that will be undertaken by the Subprocessor;
 - (b) obtain the written consent of the Controller (such consent may be withheld or subject to such conditions as the Controller considers fit at the Controller's absolute discretion);
 - (c) enter into a written legally binding agreement with the Subprocessor which give effect to the terms set out in this Joint Schedule 11 such that they apply to the Subprocessor, prior to any Personal Data being transferred to or accessed by the Subprocessor; and
 - (d) provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
14. Any Processing by a Subprocessor or transfer of Personal Data to a Subprocessor permitted by the Controller shall not relieve the Processor from any of its liabilities, responsibilities and obligations to the Controller under this Joint Schedule 11, and the Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
15. The Relevant Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Joint Schedule 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).

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16. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Relevant Authority 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's Office.

Where the Parties are Joint Controllers of Personal Data

17. In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with UK GDPR Article 26 based on the terms set out in Annex 3 to this Joint Schedule 11.

Independent Controllers of Personal Data

18. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
19. Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
20. Where a Party has provided Personal Data to the other Party in accordance with paragraph 18 of this Joint Schedule 11 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
21. The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
22. The Parties shall only provide Personal Data to each other:
- (a) to the extent necessary to perform their respective obligations under the Contract;
 - (b) in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and
 - (c) where it has recorded it in Annex 1 (*Processing Personal Data*).
23. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the

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requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.

24. A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
25. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract (**“Request Recipient”**):
 - (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - (b) where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
 - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
 - (ii) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
26. Each Party shall promptly notify the other Party upon it becoming aware of any Data Loss Event relating to Personal Data provided by the other Party pursuant to the Contract and shall:
 - (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Loss Event;
 - (b) implement any measures necessary to restore the security of any compromised Personal Data;
 - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

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27. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 (*Processing Personal Data*).
28. Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Annex 1 (*Processing Personal Data*).
29. Notwithstanding the general application of paragraphs 2 to 16 of this Joint Schedule 11 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with paragraphs 18 to 28 of this Joint Schedule 11.

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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 Relevant Authority at its absolute discretion.

1.1 The contact details of the Relevant Authority's Data Protection Officer are:

[REDACTED]

NHS England
7-8 Wellington Place,
Leeds,
LS1 4AP
E-mail: england.dpo@nhs.net

1.2 The contact details of the Supplier's Data Protection Officer are:

[REDACTED]

1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.

1.4 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Parties are Independent Controllers of Personal Data</p> <p><i>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation and in accordance with paragraph 18 in respect of:</i></p> <ul style="list-style-type: none"> <i>Business contact details of Supplier Personnel for which the Supplier is the Controller,</i> <i>Business contact details of any directors, officers, employees, agents, consultants and contractors of Relevant Authority (excluding the Supplier Personnel) engaged in the performance of the Relevant Authority's duties under the Contract) for which the Relevant Authority is the Controller</i>

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Subject matter of the Processing	N/A
Duration of the Processing	N/A
Nature and purposes of the Processing	N/A
Type of Personal Data being Processed	N/A
Categories of Data Subject	N/A
International transfers and legal gateway	N/A
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	N/A

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Annex 2 – Security

The technical security requirements set out below provide an indication of the types of security measures that might be considered, in order to protect Personal Data. More, or less, measures may be appropriate depending on the subject matter of the contract, but the overall approach must be proportionate. The technical requirements must also be compliant with legislative and regulatory obligations for content and data, such as UK GDPR. The example technical security requirements set out here are intended to supplement, not replace, security schedules that will detail the total contractual security obligations and requirements that the Processor (i.e. a supplier) will be held to account to deliver under contract. Processors are also required to ensure sufficient 'flow-down' of legislative and regulatory obligations to any third party Sub-processors.

External Certifications e.g. Buyers should ensure that Suppliers hold at least Cyber Essentials certification and ISO 27001:2013 certification if proportionate to the service being procured.

Risk Assessment e.g. Supplier should perform a technical information risk assessment on the service supplied and be able to demonstrate what controls are in place to address those risks.

Security Classification of Information e.g. If the provision of the Services requires the Supplier to Process Authority/Buyer Data which is classified as OFFICIAL, OFFICIAL-SENSITIVE or Personal Data, the Supplier shall implement such additional measures as agreed with the Authority/Buyer from time to time in order to ensure that such information is safeguarded in accordance with the applicable legislative and regulatory obligations.

End User Devices e.g.

- The Supplier shall ensure that any Authority/Buyer Data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Authority/Buyer except where the Authority/Buyer has given its prior written consent to an alternative arrangement.
- The Supplier shall ensure that any device which is used to Process Authority/Buyer Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security>.

Testing e.g. The Supplier shall at their own cost and expense, procure a CHECK or CREST Certified Supplier to perform an ITHC or Penetration Test prior to any live Authority/Buyer data being transferred into their systems. The ITHC scope must be agreed with the Authority/Buyer to ensure it covers all the relevant parts of the system that processes, stores or hosts Authority/Buyer data.

Networking e.g. The Supplier shall ensure that any Authority/Buyer Data which it causes to be transmitted over any public network (including the Internet, mobile

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networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.

Personnel Security e.g. All Supplier Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard or equivalent including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record. The Supplier may be required to implement additional security vetting for some roles.

Identity, Authentication and Access Control e.g. The Supplier must operate an appropriate access control regime to ensure that users and administrators of the service are uniquely identified. The Supplier must retain records of access to the physical sites and to the service.

Data Destruction/Deletion e.g. The Supplier must be able to demonstrate they can supply a copy of all data on request or at termination of the service, and must be able to securely erase or destroy all data and media that the Authority/Buyer data has been stored and processed on.

Audit and Protective Monitoring e.g. The Supplier shall collect audit records which relate to security events in delivery of the service or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the service, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Authority/Buyer Data. The retention periods for audit records and event logs must be agreed with the Authority/Buyer and documented.

Location of Authority/Buyer Data e.g. The Supplier shall not, and shall procure that none of its Sub-contractors, process Authority/Buyer Data outside the EEA without the prior written consent of the Authority/Buyer and the Supplier shall not change where it or any of its Sub-contractors process Authority/Buyer Data without the Authority/Buyer's prior written consent which may be subject to conditions.

Vulnerabilities and Corrective Action e.g. Suppliers shall procure and implement security patches to vulnerabilities in accordance with the timescales specified in the NCSC Cloud Security Principle 5.

Suppliers must ensure that all COTS Software and Third Party COTS Software be kept up to date such that all Supplier COTS Software and Third Party COTS Software are always in mainstream support.

Secure Architecture e.g. Suppliers should design the service in accordance with:

- NCSC "[Security Design Principles for Digital Services](#)"
- NCSC "[Bulk Data Principles](#)"

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- NSCS "[Cloud Security Principles](#)"

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Annex 3 - Joint Controller Agreement

Not Applicable

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Final Audit Report

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