

# G-Cloud 14 Call-Off Contract

This Call-Off Contract for the G-Cloud 14 Framework Agreement (RM1557.14) includes:

## G-Cloud 14 Call-Off Contract

[Part A: Order Form](#_Part_A:_Order) 2

[Part B: Terms and conditions](#_Part_B:_Terms) 11

[Schedule 1: Services](#_Schedule_1:_Services) 32

[Schedule 2: Call-Off Contract charges](#_Schedule_2:_Call-Off) 33

[Schedule 3: Collaboration agreement](#_Schedule_3:_Collaboration) 34

[Schedule 4: Alternative clause](#_Schedule_4:_Alternative) 47

[Schedule 5: Guarantee](#_Schedule_5:_Guarantee) 51

[Schedule 6: Glossary and interpretations](#_Schedule_6:_Glossary) 60

[Schedule 7: UK GDPR Information](#_Schedule_7:_UK) 77

[Annex 1: Processing Personal Data](#_Annex_1_-) 77

[Annex 2: Joint Controller Agreement](#_Annex_2_-) 80

[Schedule 8: Corporate Resolution Planning](#_Schedule_8_(Corporate) 87

[Schedule 9 : Variation Form](#_Schedule_9_-) 104

## 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.

|  |  |
| --- | --- |
| **Platform service ID number** | 6574 0723 7415 851 |
| **Call-Off Contract reference** | PS/25/44 |
| **Call-Off Contract title** | Provision of a Mainframe Service |
| **Call-Off Contract description** | Kyndryl’s zCloud Managed Service provides a mainframe Platform as a Service (PaaS) / z/OS, providing agile and scalable infrastructure |
| **Start date** | 16 August 2025 |
| **Expiry date** | 15 August 2026 |
| **Call-Off Contract value** | £**5,359,823.79** (excluding VAT), as further detailed in Appendix B of SoW for Kyndryl zCloud Managed Services inserted in Schedule 1 (Services). |
| **Charging method** |  BACS, Monthly |
| **Purchase order number** |  Purchase order number to be provided by the Buyer no later than five (5) working days after contract signature. |

This Order Form is issued under the G-Cloud 14 Framework Agreement (RM1557.14).

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

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

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

|  |  |
| --- | --- |
| **From the Buyer** | DVLALong View RoadMorristonSwansea SA6 7JL |
| **To the Supplier** | Kyndryl UK Limited 2nd Floor, 100 Liverpool Street London EC2M 2AT |
| **Together the ‘Parties’** |

###  Principal contact details

**For the Buyer:**

Title: Airwatch – Head of Service Creation

Name: Xxxxx redacted under FOI Section 40

Email: Xxxxx redacted under FOI Section 40@dvla.gov.uk

Phone: 07925 893 221

**For the Supplier:**

Title: Customer Partner

Name: Xxxxx redacted under FOI Section 40

Email: Xxxxx redacted under FOI Section 40@kyndryl.com

Phone: 07595 287 685

### Call-Off Contract term

|  |  |
| --- | --- |
| **Start date** | This Call-Off Contract Starts on **16 August 2025** and is valid for **12 months**. |
| **Ending****(termination)** | 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).The notice period for the Buyer is a minimum of **30** days from the date of written notice for Ending without cause (as per clause 18.1). |
| **Extension period** | This Call-Off Contract can only be extended by mutual agreement of the partiesFor the avoidance of doubt, the parties acknowledge the agreed position with regard to the Broadcom licence fees as set out in section B - 8: (Broadcom Licence) of Schedule 1: Services. |

### Buyer contractual details

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

|  |  |
| --- | --- |
| **G-Cloud Lot** | This Call-Off Contract is for the provision of Services Under:* Lot 3: Cloud support
 |
| **G-Cloud Services required** | The Services to be provided by the Supplier under the above Lot are set out in Schedule 1 (Services)  |
| **Additional Services** | There are no additional Services to be provided under this Call-Off Contract |
| **Location** | The Services will be delivered to:DVLA, Long View Road, Morriston, Swansea SA6 7JLThe Services will be delivered from the following data centres:* Kyndryl, Building 1, KAO Data Campus, London Road, Harlow. CM17 9NA
* Kyndryl, Building A103, Ark Cody Park, Farnborough, Hampshire GU14 0LH

Supplier may also provide the services remotely where applicable. |
| **Quality Standards** | The quality standards required for this Call-Off Contract are ISO 9001 and ISO 27001**.**  |
| **Technical Standards:** | There are no specific technical standards used as a requirement for this Call-Off Contract |
| **Service level agreement:** | The service level and availability criteria required for this Call-Off Contract are set out in Schedule 1 (Services)  |
| **Onboarding** | The onboarding plan for this Call-Off Contract is: * All Supplier personnel accessing DVLA systems must have Disclosure Scotland or equivalent
* Staff with elevated privileges in support environment must be SC cleared.
 |

|  |  |
| --- | --- |
| **Offboarding** | The offboarding plan for this Call-Off Contract, if required, will be agreed by the Parties through the variation process set out in clause 32 (the “Variation Process”) and documented in a Statement of Work. Where requested by the Buyer (giving at least 30 days’ prior written notice), the Supplier will provide to the Buyer a draft offboarding plan no later than 6 months prior to the Expiry Date, or at such other time as may be reasonably requested by the Buyer.  |
| **Collaboration agreement** | Not applicable |
| **Limit on Parties’ liability** | Clause 24 of this Call Off-Contract and clause 28.2 of the Framework Agreement are excluded and substituted with the following:Subject to incorporated Framework Agreement clauses 4.1 to 4.6, each Party’s total liability for Defaults under or in connection with this Call-Off Contract shall not exceed the following limits:* The Yearly total liability of either Party for defaults by that party resulting in direct loss or damage to the property (including technical infrastructure, assets or equipment but excluding any loss or damage to Buyer Data) of the other Party will not exceed five million pounds (£5,000,000).
* The Yearly total liability of the Supplier for Buyer Data Defaults resulting in direct loss, destruction, corruption, degradation of or damage to any Buyer Data will not exceed fifty percent (50%) of the Charges payable by the Buyer to the Supplier in that Year.
* The Yearly total liability of the Supplier for all other Defaults will not exceed the greater of one hundred thousand pounds (£100,000) or one hundred and twenty-five percent (125%) of the Charges payable by the Buyer to the Supplier in that Year.

These limits of liability will continue in force even after this Call-Off Contract Ends or expires and, subject to Framework Agreement clause 4.1, will apply to all Losses, including any indemnified Losses. |
| **Buyer’s responsibilities** | The Buyer’s responsibilities are set out in Schedule 1 (Services).The Buyer will also comply with any additional responsibilities set out in this Call-Off Contract or in any implementation or offboarding plan agreed between the Parties. |
| **Buyer’s equipment** | Not applicable |

### Supplier’s information

|  |  |
| --- | --- |
| **Subcontractors or partners** | The following is a list of the Supplier’s Subcontractors and suppliers * Kyndryl Bulgaria
* Kyndryl Hungary
* Kyndryl Slovakia
* Mackinney Systems
* Blenheim International Ltd.
* Macro4
* Broadcom / Computer Associates
* IBM
* Service Express
* Pomeroy IT Solution UK Limited

Third party products (including any hardware and/or software) and any associated services (“Third Party Products”) supplied under this Call-Off Contract are provided on an as is basis and the Buyer is only entitled to any warranty or other benefit that the Supplier has received from the manufacturer of the Third Party Products. The Supplier has no other responsibility for any Third Party Products.  |

### 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 by electronic BACS transfer or such other method as is agreed from time to time. |
| **Payment profile** | The payment profile for this Call-Off Contract is monthly.  |
| **Invoice details** | At the beginning of each month, the Supplier will issue electronic invoices for that month. The Buyer will pay the Supplier within 30 days of receipt of a valid undisputed invoice. |
| **Who and where to send invoices to** | Invoices will be sent to Unity Business Services (UBS)5 Sandringham ParkSwansea ValeSA7 0EA Alternatively, electronic invoices can be issued to SSa.invoice@Ubusinessservices.co.uk |
| **Invoice information required** | All invoices must include * the relevant Business Unit (e.g. DVLA) the services or goods were supplied to
* quote your Vendor Number
* quote Purchase Order Number
* use the units of measure, pricing units and description as stated in the Purchase Order
* be submitted in a timely manner after the despatch of goods or provision of services (and not accumulated).

**Credit Notes**Credit notes must quote the Invoice Number and Purchase Order Number that they relate to.**Invoicing** **Queries**For any queries regarding invoices you must contact Unity Business Services (UBS on telephone number 0344 892 0343.Please note that if an incorrect Purchase Order number or no Purchase Order number is quoted the invoice will be returned to you. You will be able to handwrite the correct Purchase Order numbers on the invoices that are returned, however it is preferable that you change it on your system and reissue to ensure any future invoices are referenced correctly. PLEASE BE ADVISED THAT COMPLIANCE WITH THESE PROCEDURES WILL SIGNIFICANTLY AID PROMPT PAYMENT. |
| **Invoice frequency** | Invoice will be sent to the Buyer monthly. |
| **Call-Off Contract value** | **£5,359,823.79 (excluding VAT)**, as further detailed in Appendix B of SoW for Kyndryl zCloud Managed Services inserted in Schedule 1 (Services). |
| **Call-Off Contract charges** | The breakdown of the Charges is set out in Appendix B of SoW for Kyndryl zCloud Managed Services inserted in Schedule 1 (Services)  |

### Additional Buyer terms

|  |  |
| --- | --- |
| **Performance of the** **Service** | The service level and availability criteria required for this Call-Off Contract are set out in Schedule 1 (Services).  |
| **Guarantee** | Not applicable |
| **Warranties, representations** | Not applicable |
| **Supplemental requirements in addition to the Call-Off** **terms** | Not applicable |
| **Alternative clauses** | Not applicable |
| **Buyer specific****amendments****to/refinements of the Call-Off Contract terms** | Within the scope of this Call-Off Contract, the following provisions of Part B (Terms and conditions) will not apply:* clauses 1.3 and 1.4 (extensions must be mutually agreed between the Parties);
* clause 6 (business continuity and disaster recovery services are not included except as expressly set out in Schedule 1 (Services));
* clause 9.3: (no additional insurance policies are required)
* clauses 14.3 to 14.5 (PSN is not used);
* clause 15 (open source Software is not used);
* clause 16.5 (Recovery of Buyer Data is to be provided within the capabilities of the DVLA configuration stated in Schedule 1 (Services));
* clause 18.2 (payment on termination will be as set out in Schedule 1 (Services);
* clause 21 (offboarding / exit plan requirements set out in this Order Form and in Schedule 1 (Services));
* clause 24 (liability is covered in this Order Form);
* clause 31 and Schedule 3 (Collaboration Agreement is not applicable);
* Schedule 4 (Alternative clauses are not applicable);
* Schedule 5 (Guarantee is not applicable);
* Annex 2 of Schedule 7 (Joint Controller Agreement is not applicable);
* Schedule 8 (Corporate Resolution Planning is not applicable); and
* incorporated clause 28.2 of the Framework Agreement (liability is covered in this Order Form).

Within the scope of this Call-Off Contract, the following provisions of Part B (Terms and conditions) are amended as specified below:* clause 1.2: the wording of this clause is deleted and replaced with the following: “This Call-Off Contract will end on the Expiry Date unless Ended earlier under clause 18 or extended by the mutual agreement of the parties (in which case the Call-Off Contract will end on the revised Expiry Date agreed by the parties pursuant to the variation process set out in clause 32).”
 |
| **Personal Data and** **Data Subjects** | Annex 1 of Schedule 7 is being used |
| **Intellectual Property** | There are no Project Specific IPR’s that may arise and require assignment or any other required amendments to standard IPR provisions under this Call-Off Contract. |
| **Social Value** | The Social Value, Key Performance Indicator, is described in Appendix C – 4 of the SOW in Schedule 1 (Services). |
| **Performance Indicators** | Data supplied by the Supplier in relation to Performance Indicators is deemed the Intellectual Property of the Buyer and may be published by the Buyer. |

###

### 1. Formation of contract

1.1 By signing and returning this Order Form (Part A), the Supplier agrees to enter into a Call-Off Contract with the Buyer.

1.2 The Parties agree that they have read the Order Form (Part A) and the Call-Off Contract terms and by signing below agree to be bound by this Call-Off Contract.

1.3 This Call-Off Contract will be formed when the Buyer acknowledges receipt of the signed copy of the Order Form from the Supplier.

1.4 In cases of any ambiguity or conflict, the terms and conditions of the Call-Off Contract (Part B) and Order Form (Part A) will supersede those of the Supplier Terms and Conditions as per the order of precedence set out in clauses 8.3 to 8.6 inclusive of the Framework Agreement.

### 2. Background to the agreement

2.1 The Supplier is a provider of G-Cloud Services and agreed to provide the Services under the terms of Framework Agreement number RM1557.14.

|  |  |  |
| --- | --- | --- |
| **Signed** | Supplier | Buyer |
| **Name** | Xxxxx redacted under FOI Section 40 | Xxxxx redacted under FOI Section 40 |
| **Title** | Senior Vice President | DVLA Commercial Director |
| **Signature** |  Xxxxx redacted under FOI Section 40 |  Xxxxx redacted under FOI Section 40 |
| **Date** | 31/07/2025 | 31/07/2025 |

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

### Buyer Benefits

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

  [G-Cloud 14 Customer Benefit Record](https://crowncommercial.qualtrics.com/jfe/form/SV_8qenfmII5Xf27au)

## 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 36 months

### 2. Incorporation of terms

2.1 The following Framework Agreement clauses (including clauses, schedules 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)
* 5.4 to 5.6 (Change of control)
* 5.7 (Fraud)
* 5.8 (Notice of fraud)
* 7 (Transparency and Audit)
* 8.3 to 8.6 (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)
* 30 (Insurance)
* 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 possibl 4.1.5 complete any necessary Supplier Staff vetting as specified by the Buyer

4.2 The Supplier must retain overall control of the Supplier Staff so that they are not considered to be employees, workers, agents or contractors of the Buyer.

4.3 The Supplier may substitute any Supplier Staff as long as they have the equivalent experience and qualifications to the substituted staff member.

4.4 The Buyer may conduct IR35 Assessments using the ESI tool to assess whether the Supplier’s engagement under the Call-Off Contract is Inside or Outside IR35.

4.5 The Buyer may End this Call-Off Contract for Material Breach as per clause 18.5 hereunder if the Supplier is delivering the Services Inside IR35.

4.6 The Buyer may need the Supplier to complete an Indicative Test using the ESI tool before the Start date or at any time during the provision of Services to provide a preliminary view of whether the Services are being delivered Inside or Outside IR35. If the Supplier has completed the Indicative Test, it must download and provide a copy of the PDF with the 14 digit ESI reference number from the summary outcome screen and promptly provide a copy to the Buyer.

4.7 If the Indicative Test indicates the delivery of the Services could potentially be Inside IR35, the Supplier must provide the Buyer with all relevant information needed to enable the Buyer to conduct its own IR35 Assessment.

4.8 If it is determined by the Buyer that the Supplier is Outside IR35, the Buyer will provide the ESI reference number and a copy of the PDF to the Supplier.

### 5. Due diligence

5.1 Both Parties agree that when entering into a Call-Off Contract they:

 5.1.1 have made their own enquiries and are satisfied by the accuracy of any information supplied by the other Party

 5.1.2 are confident that they can fulfil their obligations according to the Call-Off Contract terms

 5.1.3 have raised all due diligence questions before signing the Call-Off Contract

 5.1.4 have entered into the Call-Off Contract relying on 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

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### 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.

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### 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 trademarks 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 misappropriate 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 judgement 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](https://www.gov.uk/government/publications/security-policy-framework%20) and the Government Security - Classification policy: https:/www.gov.uk/government/publications/government-security-classifications

13.6.2 guidance issued by the Centre for Protection of National Infrastructure on Risk Management[: https://www.npsa.gov.uk/content/adopt-risk-management-approach](https://www.cpni.gov.uk/content/adopt-risk-management-approach) and Protection of Sensitive Information and Assets: <https://www.npsa.gov.uk/sensitive-information-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](https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice)

13.6.5 the security requirements of cloud services using the NCSC Cloud Security Principles and accompanying guidance:

<https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles>

13.6.6 Buyer requirements in respect of AI ethical standards.

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

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

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

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

### 14. Standards and quality

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

14.2 The Supplier will deliver the Services in a way that enables the Buyer to comply with its obligations under the Technology Code of Practice, which is at: [https://www.gov.uk/government/publications/technologycode-of-practice/technology -code-of-practice](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

* 1. 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.
	2. 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 CDDO 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 Neither Party will be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Call-Off Contract (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure event.

23.2 A Party will promptly (on becoming aware of the same) notify the other Party of a Force Majeure event or potential Force Majeure event which could affect its ability to perform its obligations under this Call-Off Contract.

23.3 Each Party will use all reasonable endeavours to continue to perform its obligations under the Call-Off Contract and to mitigate the effects of Force Majeure. If a Force Majeure event prevents a Party from performing its obligations under the Call-Off Contract for more than 30 consecutive Working Days, the other Party can End the Call-Off Contract with immediate effect by notice in writing.

###

### 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 is not a Party to this Call-Off Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms. This does not affect any right or remedy of any person which exists or is available otherwise.

### 28. Environmental requirements

28.1 The Buyer will provide a copy of its environmental policy to the Supplier on request, which the Supplier will comply with.

28.2 The Supplier must provide reasonable support to enable Buyers to work in an environmentally friendly way, for example by helping them recycle or lower their carbon footprint.

### 29. The Employment Regulations (TUPE)

29.1 The Supplier agrees that if the Employment Regulations apply to this Call-Off Contract on the Start date then it must comply with its obligations under the Employment Regulations and (if applicable) New Fair Deal (including entering into an Admission Agreement) and will indemnify the Buyer or any Former Supplier for any loss arising from any failure to comply.

29.2 Twelve months before this Call-Off Contract expires, or after the Buyer has given notice to end it, and within 28 days of the Buyer’s request, the Supplier will fully and accurately disclose to the Buyer all staff information including, but not limited to, the total number of staff assigned for the purposes of TUPE to the Services. For each person identified the Supplier must provide details of:

 29.2.1 the activities they perform

 29.2.2 age

 29.2.3 start date

 29.2.4 place of work

 29.2.5 notice period

 29.2.6 redundancy payment entitlement

 29.2.7 salary, benefits and pension entitlements

 29.2.8 employment status

 29.2.9 identity of employer

 29.2.10 working arrangements

29.2.11 outstanding liabilities

 29.2.12 sickness absence

 29.2.13 copies of all relevant employment contracts and related documents

29.2.14 all information required under regulation 11 of TUPE or as reasonably requested by the Buyer.

29.3 The Supplier warrants the accuracy of the information provided under this TUPE clause and will notify the Buyer of any changes to the amended information as soon as reasonably possible. The Supplier will permit the Buyer to use and disclose the information to any prospective Replacement Supplier.

29.4 In the 12 months before the expiry of this Call-Off Contract, the Supplier will not change the identity and number of staff assigned to the Services (unless reasonably requested by the Buyer) or their terms and conditions, other than in the ordinary course of business.

29.5 The Supplier will cooperate with the re-tendering of this Call-Off Contract by allowing the Replacement Supplier to communicate with and meet the affected employees or their representatives.

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

29.6.1 its failure to comply with the provisions of this clause

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

* 1. The provisions of this clause apply during the Term of this Call-Off Contract and indefinitely after it Ends or expires.
	2. 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 using the template in Schedule 9 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 using the template in Schedule 9. This includes any changes in the Supplier’s supply chain.

32.3 If either Party can’t agree to or provide the Variation, the Buyer may agree to continue performing its obligations under this Call-Off Contract without the Variation, or End this Call-Off Contract by giving 30 days’ notice to the Supplier.

###

### 33. Data Protection Legislation (GDPR)

33.1 Pursuant to clause 2.1 and for the avoidance of doubt, 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

The Services are set out in the Statement of Work for the Kyndryl zCloud Managed Service (the “SOW”). The Statement of Work directly succeeds this Call-Off Contract and is set out below.

1. Schedule 1 (Services):
2. Statement of Work for
3. the Kyndryl zCloud Managed Service

|  |  |
| --- | --- |
|  |  |
| Buyer:The Driver and Vehicle Licensing Agency (DVLA) Longview Road,Morriston,SwanseaWest Glamorgan SA6 7JL(hereinafter “DVLA”, “Client”, “Buyer” “you” or ”your” ) |  | Supplier:Kyndryl UK Limited 2nd Floor, 100 Liverpool Street London EC2M 2AT(hereinafter “Kyndryl”, “our” or “Supplier”) |
| **Client Number:**GB30281Y |  | **Statement of Work Number:**1 |
| **Client Reference Data:**N/A |  | **Date Prepared:**31.07.25 |

This Statement of Work is subject to and contracted under the Call-Off Contract with the reference PS/25/44, awarded under the G-Cloud 14 Framework Agreement (RM1557.14).

Each of us agrees that the complete agreement between us regarding this transaction consists of the documents forming the Call-Off Contract (as identified therein), including this Statement of Work, which replace any prior oral or written communications between us.

In the event of any conflict between the terms of other documents forming the Call-Off Contract and the terms of this Statement of Work, the terms of this Statement of Work shall prevail to the extent of such conflict.

This Statement of Work may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of the Statement of Work. Once accepted, i) any reproduction of this Statement of Work made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Services under this Statement of Work and the Call-Off Contract are subject to it.

Table of Contents

[1. Definitions 3](#_Toc201795735)

[1.1 Exit 7](#_Toc201795736)

[2. The zCloud Service 8](#_Toc201795737)

[2.1 Introduction 8](#_Toc201795738)

[2.2 Scope - z/OS Cloud LPAR Service Types 8](#_Toc201795739)

[2.3 Scope - z/OS Cloud Disk Service Types 8](#_Toc201795740)

[2.4 Scope - z/OS Cloud Tape Service Types 9](#_Toc201795741)

[2.5 Preparing z/OS Cloud Infrastructure for DVLA 10](#_Toc201795742)

[2.6 Ongoing Services and Support Responsibilities 12](#_Toc201795743)

[3. The Managed Service 15](#_Toc201795744)

[3.1 Introduction 15](#_Toc201795745)

[3.2 Base Services 15](#_Toc201795746)

[3.3 Additional Services 16](#_Toc201795747)

[3.4 Documentation 16](#_Toc201795748)

[3.5 Changes 17](#_Toc201795749)

[3.6 Software Required Consents and Indemnity 17](#_Toc201795750)

[3.7 Project Change Control 17](#_Toc201795751)

[3.8 Project Change Request Form 19](#_Toc201795752)

[3.9 Security 20](#_Toc201795753)

[4. Value Add Modernisation Advice 20](#_Toc201795754)

[Appendix A: UK zCloud Service Plan 21](#_Toc201795755)

[Appendix B: z/OS Cloud Charges, Contractual Baselines and Rates 22](#_Toc201795756)

[Appendix C: Service Level Agreement and Key Performance Indicators 30](#_Toc201795757)

1. Kyndryl Cloud Managed Services for System z – z/OS Services
	1. Definitions
2. Unless otherwise defined in this Services Schedule capitalised expressions used herein shall have the meaning given to them in the Call-Off Contract. In this Services Schedule the following terms shall have the following meanings:

**Additional Resource Charge (ARC)** means –– the charge, as set forth in Appendix B, (z/OS Cloud Charges, Contractual Baselines and Rates), to DVLA if Assigned Resource Units are above the applicable z/OS Cloud Contractual Baseline.

**Additional Services** means – the additional services that DVLA has selected for Kyndryl to perform under the terms and conditions of this Call-Off Contract.

**Alternate Server** means –– the Server within the z/OS Cloud Complex which has been assigned to host a CLIENT LPAR during Failover. This is established for those LPARs that are assigned to the Hot Standby service (DVLA does not have Hot Standby).

**Application Development and Test LPARS** means – any LPAR exclusively used for z/OS-based application development and test activities specific to application development, with no other workloads co-located within the Application Development and Test LPARs.

**Assigned Resource Units** means –– the number of Resource Units assigned to DVLA.

**Base Component** means –– the z/OS Cloud hardware and software that Kyndryl makes available including those specified in Appendix A, (UK zCloud Service Plan).

**Base Services** means – the Services with the exclusion of Additional Services (see definition above), as per Section 3.2 “*Base Services*”.

**Cap** means –– a Server capacity limit that is established for the DVLA environment and includes Hard Cap, Group Soft Cap or Soft Cap as appropriate.

**Change Management Process** means –– the process agreed to by the parties for handling changes to the Services.

**DASD** means –– Direct Access Storage Device or disk storage.

**Delivery Location** means – a Kyndryl facility from where Kyndryl provides the Services for DVLA Configuration.

**DVLA Component** means –– software that DVLA provides including those specified in Appendix B-7 DVLA ISV Software to be licensed by DVLA,

**DVLA Configuration** – means the hardware machines (the “*Hardware*”) and software (the “*Software*”) configuration on which Kyndryl will deliver the Services to DVLA. DVLAs Configuration and the relative locations where the machines are physically housed are specified in this SOW. The Software will consist of both applications software (the “*Applications Software*”) and the operating system software and systems utilities software (the “*Systems Software*”).

**DVLA Data** means – any information relating to an identifiable individual (Personal Data) that Kyndryl processes on DVLA behalf in performing the Services. DVLA Data excludes Personal Data:

1. processed by Kyndryl for any reason other than Kyndryl's performance of the Services;
2. processed by Kyndryl because of its relationship with its DVLAs (including DVLA and DVLA Affiliates) generally; and
3. relating to employees of Kyndryl, its Affiliates, and their Subcontractors.

**Effective Date** means –– the Start date of the Call-Off Contract.

**Failover** means –– the tasks performed to move a DVLA workload from the Standard LPAR to its associated DR or High Availability LPAR(s).

**Failover Time Period** means –– a period of time during which any of DVLA’s LPARs are experiencing a planned z/OS Cloud Server Outage or an unplanned service interrupt and services are being provided by a DR or High Availability LPAR.

**FlashCopy** means –– a type of disk storage in which a point in time copy of the Client data (or sub-set of that data) will reside in the same storage sub-system as the Standard Disk footprint of that data.

**Focal Point** means – the person, designated by DVLA, who has the authority to act for and on DVLA behalf in all aspects of the SOW, who acts as the primary interface with the Service Manager, and to whom Kyndryl will address all communications related to the Services.

**Forecasted Monthly Usage** means –– a twelve (12) month rolling forecast of anticipated Resource Units provided by DVLA to assist Kyndryl with capacity planning.

“**Front Desk**” means – the Kyndryl operations team for assistance with the resolution of incidents, system administration requests and change requests related to the Services. The Kyndryl operations team shall be accessible via telephone number or e-mail to the DVLA applications team.

**Gigabytes or GB** means –– 1,000,000,000 bytes of data.

**Global Mirror** means –– a type of disk storage described in Section 2 of this SOW.

**Global Virtual Tape** means –– the mirroring of multiple virtual tape images between multiple automated tape libraries across multiple sites.

**Group Soft Cap** means –– a capacity limit set on the average MIPS available to a group of LPARs over a four (4) hour rolling time period. The actual MIPS available at any moment in time can exceed such limit up to the MIPS capacity of the number of logical processors assigned to the group of LPARs.

**Hard Cap** means –– a capacity limit set on the number of MIPS available to an LPAR. During any system management time slice, the number of MIPS available to an LPAR cannot exceed such limit.

**Hard Capped LPAR** means –– an LPAR which has a Hard Cap set.

**Hours of Service Operation** means – the normal hours of operation for the Services, which is Monday to Friday 08:00 to 18:00, excluding UK public holidays.

**Priority 1 Incident** means – a critical incident has taken place which has caused severe business disruption. Such that a business unit or user group is unable to operate. A critical system component has failed or severely imparired on-line systems of batch work.

**Priority 2 Incident** means – a high impact incident has taken place which has caused major business disruption. Where a critical user or number of users are unable to operate. A Business Unit is experiencing significant reduction in system performance; or non-critical batch job failure.

**Priority 3 Incident** means – minor business disruption has been caused with a single user unable to operate with no available workaround.

**Priority 4 Incident** means – minor disruption has been caused with a single user or user group experiencing problems, but with available work around.

**ISV** means –– the Independent Software Vendor for software products which are licensed for use by DVLA within their assigned LPAR(s).

**Kyndryl Data Centre** means –– a building owned, leased or rented by Kyndryl or its Subcontractor, located at Building 1, KAO Data Campus, London Road, Harlow. CM17 9NA and Farnborough ARK, A103 Cody Technology Park, Victor Way Farnborough, GU14 0LH, United Kingdom and used by Kyndryl to house Kyndryl Internal and/or Kyndryl Client information technology services and systems.

**Key Users** means – the individuals DVLA will assign as primary contacts to Kyndryl with respect to incident determination, and who are familiar with the environment and operations.

**Large System Performance Reference (LSPR)** means –– the set of relative performance indicators for System z published by IBM.

**Level 1** means – the DVLA Service Desk.

**Level 2** means – the Kyndryl 2nd level technical support teams.

**Location** means – the place or places where DVLA Configuration and IT personnel are located.

**LPAR** means –– a logical partition of the mainframe in which physical resources are assigned and a unique instance of the z/OS operating system is installed.

**MIPS** means –– millions of instructions per second, and is a standard measure of capacity for mainframes. Each System z server model will have a stated MIPS rating.

**MSU** means –– millions of service units and is a capacity measurement used for licensing software by some vendors including IBM and Broadcom. IBM defines the ratio between MSU and MIPS. This ratio varies between processor families and models. Each System z server model will have a stated MSU rating.

**Operational Documentation** means – the documentation Kyndryl provides to DVLA, which includes, but is not limited to,the processes and procedures for incident management, change management, systems recovery and security related to the performance of the Services.

**Patch** means – a software fix and is synonymous with “Program Temporary Fix”.

**Peak 4 Hour Rolling Average** means –– the highest MIPS used during any consecutive four hour measurement period.

**Primary Production Server** means – the server that is designated as the main Mainframe processor for DVLA business activities and for the delivery of Services.

**Primary Server** means –– the Server within the z/OS Cloud Complex which has been assigned to host a DVLA LPAR(s) during normal operation.

**Primary Site** means –– the Kyndryl Data Centre hosting the DVLA Primary Server.

**Program Temporary Fix** or **PTF** means – a software fix that has been made available by the supplier to correct a known problem.

**Reduced Resource Credit (RRC)** means –– the credit, as set forth in Appendix B, (z/OS Cloud Charges, Contractual Baselines and Rates), to DVLA if Assigned Resource Units are below the applicable z/OS Cloud Contractual Baseline.

**Resource Unit (RU)** means –– units of resource for which Kyndryl and DVLA have established a z/OS Cloud Contractual Baseline.

**SCRT** means –– the IBM Sub Capacity Reporting Tool which is used by Kyndryl to measure capacity utilization on an LPAR basis averaged out during a 4 hour average sampling window.

**Secondary Site** means –– an Kyndryl Data Centre that is geographically separate from the Primary Site from which z/OS cloud services may also be provided.

**Server** means –– the physical processor and processor components that are in the z/OS Cloud infrastructure.

**Service Report** means – a report Kyndryl prepares which gives history and brief details of incidents, changes, amendments to Operational Documentation and incident data in a standard Kyndryl designated format.

**Services** means – the totality of the Services that Kyndryl provides as described in Sections 2 and 3 of this SOW.

**Service Availability** means – the definition given in C – 1 of this SOW.

**Service Manager** means – Kyndryl's designated person that is responsible for Kyndryl's day-to-day activities during the provision of the Services.

**Service Review** means – a periodic meeting or teleconference between the Service Manager and the Focal Point to review the performance of the Services and to discuss any appropriate actions depending on the situation.

**Short Term Resource Flex Up Rate** means –– the MIPS rate specified in Appendix B-1 (z/OS Cloud Charges, Contractual Baselines and Rates) for short term increases to MIPS.

**SNMP** means – Simple Network Management Protocol.

**Soft Cap** means –– a capacity limit set on the average MIPS available to an LPAR over a 4 hour rolling time period. The actual MIPS available at any moment in time can exceed such limit up to the MIPS capacity of the number of logical processors assigned to the LPAR.

**Soft Capped LPAR** means –– an LPAR which has a Soft Cap set.

**Software** means – Applications Software and Systems Software, collectively.

**Software Stack** means **––** the software available and listed in Section B-2 of Appendix B, (z/OS Cloud Charges, Contractual Baselines and Rates).

**Standard Disk** means –– a type of disk in which data will reside in a storage sub-system connected to the z/OS Cloud with no mirroring.

**Standard LPAR** means –– an LPAR that is hosted on a single Server within the z/OS Cloud Complex.

**Standard Tape** means –– a physical tape in a single shared automated tape library.

**Start Date** means–– the date that the services are delivered from as specified in the Order Form.

**Sub Capacity Licensing Agreement** means –– the licensor of a software product agrees that a subset of the Server’s overall capacity can be a valid measure of the capacity upon which such software is licensed.

**System Software** means – the programs, including all source code (if applicable), supporting documentation and media that:

1. perform tasks basic to the functioning of data processing and telecommunication; and
2. are required to operate the Applications Software

**Total z/OS MSUs Consumed** means – the total hourly MSU utilization for all of the LPARs for DVLA, in the aggregate, running the z/OS operating system in any given monthly period as shown in the IBM SCRT product report for ISV programs, regardless of whether the Broadcom mainframe software is actually installed or executed. Dedicated Application Development and Test LPARs will be excluded for the purposes of calculating the Total z/OS MSUs Consumed, provided DVLA identifies such excluded LPARs by name with modifications in writing prior to the effective month of the change

**Virtual Tape** means –– a virtual logical tape volume on a physical storage device.

**z/OS Cloud** means –– the Kyndryl Cloud Managed Services for System z – z/OS service which provides the hardware, software and management processes upon which the DVLA mainframe LPARs will operate.

**z/OS Cloud Complex** means –– the mainframe Servers and the associated hardware and software, which are used to host DVLA’s mainframe LPARs within the z/OS Cloud. The z/OS Cloud Complex includes, but is not limited to the mainframe Servers, FICON Directors, OSA network cards, storage hardware, z/OS Cloud Software Products and tape controllers.

**z/OS Cloud Contractual Baseline** means –– the quantity of z/OS Cloud Resource Units assigned to DVLA utilised for calculating charges as set forth in Appendix B, (z/OS Cloud Charges, Contractual Baselines and Rates).

**z/OS Cloud Custom Software** means –– the IBM or Independent Software Vendor (ISV) software products which are licensed as Client-specific for use by DVLA for operation within its assigned LPARs.

**z/OS Cloud DFSMS Data Collection Facility (DCOLLECT)** means –– the tool used by Kyndryl to measure disk space allocated to DVLA.

**z/OS Cloud Disk Storage Service Type** means –– the type of disk storage available to DVLA described in Section 2.3 of this SOW.

**z/OS Cloud Hardware Levels** means –– the provided hardware levels of the Base Components as published in the z/OS Cloud Service Plan as described in Section 2.5.1.

**z/OS Cloud LPAR Service Type(s)** means –– the type of LPARs described in Section 2.2 of this SOW.

**z/OS Cloud Maintenance Schedule** means –– the schedule of z/OS Cloud Maintenance Window.

**z/OS Cloud Maintenance Window** means –– the period(s) of time and date(s) upon which one or more Servers in the z/OS Cloud Complex will undergo hardware maintenance which may result in z/OS Cloud Service Outages for DVLA standard LPAR(s).

**z/OS Cloud Server Outage** means –– that period of time being the duration of a planned z/OS Cloud Maintenance Window or an unscheduled failure of a Server within the z/OS Cloud Complex hosting any DVLA LPAR.

**z/OS Cloud Service Criteria** means –– those Service Criteria which must be continuously met in order for DVLA’s systems to be eligible to reside on a z/OS Cloud Complex, as more fully described in the z/OS Cloud Service Plan.

**z/OS Cloud Service Hours** means –– the hours of normal operations as defined in Appendix C – 1 of this SOW.

**z/OS Cloud Service Plan** means –– the operations document that is updated annually and defined in Section 2.5.1

**z/OS Cloud Service Type** means –– the z/OS Cloud LPAR Service, z/OS Cloud Disk Storage Service and z/OS Cloud Tape Service and z/OS Cloud Disaster Recovery Service as described in this SOW.

**z/OS Cloud Software Levels** means –– the permitted software levels of the z/OS Cloud Software Products as published in the z/OS Cloud Service Plan.

**z/OS Cloud Software Product** means –– a software product centrally licensed as part of the z/OS Cloud service for which Kyndryl defines a level N and N-1 (version, release and modification) to which DVLA LPARs hosted on the z/OS Cloud service must be maintained.

**z/OS Cloud Storage Outage** means –– the duration of a planned z/OS Cloud Maintenance Window or an unscheduled failure of a storage device within the z/OS Cloud Complex holding the data for any DVLA LPAR.

**z/OS Cloud Tape Service Types** means–– the type of tape services described in Section 2.4 of this SOW.

* + 1. Exit

As set out in the Offboarding section of the Order Form and further detailed below.

* + - 1. Exit Management

On termination of the Call-Off Contract for any reason Kyndryl will provide reasonable assistance to DVLA to facilitate the end of the Services (should they reach the end of their intended purpose) and/or the effective and orderly transfer of the Services back to DVLA or to enable another party chosen by DVLA (in this provision, a New Service Provider) to take over the provision of all or part of the Services. The following provisions shall apply without prejudicing or restricting the generality of this obligation:

* + - 1. Exit Management Charges

It is agreed that reasonable Kyndryl charges may apply relating to provision of exit management services and that such charges shall be agreed between the parties through the Exit Plan drafting process.

* + - 1. Exit Plan and Procedures (Documentation)

The Exit Plan, if required, shall:

1. detail how the Services will transfer to the new service provider and/or DVLA;
2. specify any reasonable charges that would be payable for the provision of exit management services;
3. provide a timetable and identify critical issues; and
4. set out the management structure.

In addition, within 30 days after service of a termination notice by either party or six months prior to the expiration of this Call-Off Contract, the parties shall update the Exit Plan into a final form. The parties shall meet and use their respective reasonable endeavours to agree the contents of such Exit Plan.

The parties shall jointly participate in ensuring the exit management plan would provide an orderly, effective and smooth transition of the provision of the Service from Kyndryl to DVLA or a successor supplier.

Kyndryl shall promptly and fully answer reasonable questions about the Services which may be asked by DVLA for the purpose of adequately understanding the manner in which the Services have been provided or for the purpose of allowing any potential New Service Provider to conduct for example 'due diligence'. It is agreed that any additional reasonable Kyndryl costs incurred by Kyndryl in providing this assistance shall be borne by DVLA.

Kyndryl shall make available to DVLA any Machines, Programs, Project Materials that are the property of and/or licensed to DVLA.

Kyndryl shall have the right to make reasonable charges should Kyndryl incur associated costs. Unless the Buyer terminates for an Insolvency Event as per clause 18.5.2 of the Call-Off Contract, then the Supplier will help the Buyer to migrate the Services to a replacement supplier in line with the exit plan, with the Supplier covering its own expenses for such exit assistance.

* 1. The zCloud Service
		1. Introduction

This section describes the services responsibilities of Kyndryl and DVLA with respect to use of the Kyndryl z/OS Cloud described below and set forth in Appendices A-C.

* + 1. Scope - z/OS Cloud LPAR Service Types

Kyndryl will provide z/OS Cloud Services to DVLA as set forth in Appendix B-1, (z/OS Cloud Charges, Contractual Baselines and Rates).

Changes in the z/OS Cloud Service Type assigned to DVLA will be handled in accordance with the Change Management Process.

Each DVLA LPAR will be assigned to a specific named Server within the z/OS Cloud Complex (the “Primary Server”). Kyndryl reserves the right to change the Primary Server via the Change Management Process.

The following z/OS LPAR Service Types are available to DVLA in z/OS Cloud.

* + - 1. Standard LPAR

A Standard LPAR is the z/OS Cloud Service Type in which the DVLA workload is hosted on a single Server within the z/OS Cloud Complex for which there is no Alternate Server to run the workload during a z/OS Cloud Server Outage.

In the event of a z/OS Cloud Server Outage on the Server hosting a DVLA Standard LPAR that LPAR will be unavailable until the event has completed.

For each Standard LPAR Kyndryl will create a Standard LPAR on the Primary Server to meet DVLA’s z/OS Cloud Contractual Baseline MIPS set forth in Appendix B-1; (z/OS Cloud Charges, Contractual Baselines and Rates).

* + - 1. Disaster Recovery LPAR’s

A DR LPAR is the z/OS Cloud LPAR Service Type in which the DVLA workload can be hosted on a DR Server at the z/OS Cloud Complex DR Site.

In the event of a z/OS Cloud Server Outage on DVLA’s Primary Server which is deemed by both parties to be a DR event, Kyndryl will initialize the DR Server to host the DVLA workload until the DVLA LPARs on the Primary Server are recovered.

For each DR LPAR, Kyndryl will create a second LPAR on the DR Server to meet DVLA’s z/OS Cloud Contractual Baseline MIPS as set forth in Appendix B-1; (z/OS Cloud Charges, Contractual Baselines and Rates).

The LPARs on the Primary and Alternate Servers will not be concurrently activated except for during contracted DR test. DR Testing will be limited to 3 days, per test, with up to 2 tests per contract year.

* + 1. Scope - z/OS Cloud Disk Service Types

Changes in the z/OS Cloud Disk Service Type assigned to DVLA will be handled in accordance with the Change Management Process.

* + - 1. Standard Disk

Standard Disk is the z/OS Cloud Disk Service Type in which the DVLA data will reside in a storage sub-system(s) connected to the z/OS Cloud via fibre connection (“FICON”) with no mirroring.

In the event of a z/OS Cloud Storage Outage on the disk sub-systems hosting DVLA’s Standard Disk allocation, the data on those disk sub-systems will be unavailable until service has been restored.

In the case of an unplanned outage, Kyndryl will, if necessary, recover the data from a back-up copy
For each Standard Disk footprint Kyndryl will create a Standard Disk allocation on the primary disk sub-system to meet DVLA’s z/OS Cloud Contractual Baselines for Gigabytes as set forth in the Appendix B-1, (z/OS Cloud Charges, Contractual Baselines and Rates).

* + - 1. Global Mirror

Global Mirror is the z/OS Cloud Disk Storage Service Type in which a second disk storage sub-system in the Secondary Site is used to host an asynchronous data replication from the Standard Disk footprint.

In the event of storage or disk hardware failure at the Primary Site, Kyndryl will use the Global Mirror copy to recover the DVLA service at the Secondary Site.

In the event of a z/OS Cloud Storage Outage on the disk sub-system hosting a DVLA Global Mirror disk allocation, the mirroring will be suspended and the data on the affected disk sub-system will be unavailable until the event has completed. At the end of the event, the data mirroring will be re-established.

For each Global Mirror footprint, Kyndryl will perform the activities to:

1. create a disk allocation on an alternate disk sub-system within the Secondary Site to meet DVLA’s z/OS Cloud Contractual Baseline for Gigabytes assigned as set forth in Appendix B-1; (z/OS Cloud Charges, Contractual Baselines and Rates); and
2. create an asynchronous mirroring relationship between the Standard Disk and Global Mirror disk sub-systems.
	* + 1. Flash Copy

FlashCopy is the zCloud Disk Storage Service Type in which a point in time copy (or copies) of the DVLA data (or sub-set of that data) will be restored to from the Global Mirror zCloud Disk Storage.

In the event of storage or disk hardware failure at the Primary Site, Kyndryl will use the Global Mirror copy to copy data to the Flash Copy service at the Secondary Site.

For each FlashCopy footprint, Kyndryl will perform the activities to create a disk allocation on the secondary disk sub-system to meet DVLA's zCloud Contractual Baselines for Gigabytes as set forth in Appendix B: zCloud Charges, Contractual Baselines and Rates.

* + 1. Scope - z/OS Cloud Tape Service Types

Kyndryl will provide z/OS Cloud Tape Services to DVLA as per the z/OS Cloud Contractual Baselines set forth in Appendix B-1, (z/OS Cloud Charges, Contractual Baselines and Rates). Changes to the z/OS Cloud Tape Service Type will be handled in accordance with the Change Management Process. The following z/OS Cloud Tape Service Types are available to DVLA.

* + - 1. Virtual Tape

Virtual Tape is the z/OS Cloud Tape Service Type where tape data is hosted on a physical storage device that virtualizes tape processing This device is shared among z/OS Cloud customers with each customer’s Virtual Tape allocation sized according to the number of Gigabytes required. This Service Type does not include encryption.

For each Virtual Tape Service, Kyndryl will:

* + - 1. assign a Virtual Tape volume serial range within the Virtual Tape server to CN;
			2. set up the necessary security profiles to isolate the assigned volumes and serial numbers; and
			3. assign the contracted space within the Virtual Tape server – as per the z/OS Cloud Contractual Baselines set forth in Appendix B-1; (z/OS Cloud Charges, Contractual Baselines and Rates).
			4. Global Virtual Tape

Global Virtual Tape is the z/OS Cloud Tape Service Type in which the Virtual Tape (as described in the Virtual Tape Service Type above) is mirrored to multiple Virtual Tape servers across multiple sites to provide increased availability of CN data. The devices are shared among z/OS Cloud customers. This Service Type does not include encryption.

For each Global Virtual Tape Service, Kyndryl will:

* + - 1. assign dedicated logical volumes within the Virtual Tape server to CN;
			2. set up the necessary security profiles to isolate the assigned volumes and serial numbers;
			3. assign the dedicated logical volumes across the secondary Virtual Tape server as per the z/OS Cloud Contractual Baselines set forth in Appendix B-1; (z/OS Cloud Charges, Contractual Baselines and Rates); and
			4. set up the necessary mirroring profiles across the Virtual Tape servers – as per the z/OS Cloud Contractual Baselines set forth in Appendix B-1; (z/OS Cloud Charges, Contractual Baselines and Rates).
		1. Preparing z/OS Cloud Infrastructure for DVLA
			1. z/OS Cloud Service Plan

The z/OS Cloud Service Plan is the document owned and maintained by Kyndryl or its Subcontractor which is updated periodically and defines:

* + - 1. the supported z/OS Cloud Hardware Levels;
			2. the supported z/OS Cloud Software Levels;
			3. the current z/OS Cloud Maintenance Schedule;
			4. the z/OS Cloud Service Criteria; and
			5. The z/OS Cloud Hardware Levels, z/OS Software Levels and z/OS Maintenance Schedule current at the time of the agreement of this contract are listed in Appendix A, (UK zCloud Service Plan).
			6. z/OS Cloud Service Tasks

The z/OS Cloud Complex is a shared information technology computing environment. This section outlines the tasks Kyndryl and DVLA will perform as it relates to general services in the z/OS Cloud environment.

Kyndryl Responsibilities:

To maintain consistent service delivery for all z/OS Cloud users Kyndryl will:

manage the z/OS Cloud Complex within an Kyndryl Data Centre

provide, operate, maintain and support the Base Components as listed in the Appendices.

provide no less than three (3) months written notice to DVLA of any changes to the z/OS Cloud Service Plan;

at least once a year, publish the defined z/OS Cloud Software Levels of current level (“N”) and a previous level (“N-1”) in the Z/OS Cloud Service Plan;

provide reasonable prior notice to DVLA of any change to the Servers in the z/OS Cloud Complex which are likely to require new or replacement software keys;

publish and be responsible for managing changes to the z/OS Cloud Maintenance Schedule as defined by Kyndryl in the z/OS Cloud Service Plan;

only support devices connected to DVLA’s LPARs that are supported by vendor supported levels of hardware and software; Kyndryl’s formal agreement is required for any deviation to this level of vendor support.

reserve the right to use the hardware within the z/OS Cloud Complex, in the sole discretion of Kyndryl, to host LPARs which are owned and used by Kyndryl, or by other Clients of Kyndryl, including competitors of DVLA, and notwithstanding any other provision of this Call-Off Contract, DVLA irrevocably waives any right to object to, or to prevent the hosting of any internal Kyndryl or Kyndryl DVLA LPAR(s) on any Server in the z/OS Cloud Complex, and agrees to share the z/OS Cloud Complex with such LPAR(s);

reserve the right to perform, in Kyndryl’s sole discretion, dynamic hardware changes (i.e. those which do not require DVLA’s LPARs to be re-started or otherwise interrupted), during the z/OS Cloud Service Hours; and

reserve the right to change DVLA’s Primary or DR Server to another Server within the same z/OS Cloud Complex at Kyndryl’s cost. It is acknowledged that this must be a UK based server. Any extension to the term will require Kyndryl’s confirmation of server location prior to extension.

DVLA Responsibilities:

In order to be eligible to board and continue utilizing the z/OS Cloud, DVLA must;

agree to adhere to Kyndryl‘s release level requirements as specified in the z/OS Cloud Service Plan;

maintain all software:

in the case of IBM z/OS Cloud software, at the vendor supported licenced versions. All DVLA LPARs running that z/OS Cloud Software Product have one year to upgrade to this software level, and

for software other than the IBM z/OS Cloud software:

at a level which is supported by the vendor at the z/OS Cloud Software Level of the z/OS Cloud Software Products on which those software product(s) are dependent. For example, an upgrade to CICS may need several ISV products updated to keep the ISV support valid; and

DVLA is responsible for any software component which is no longer supported and must maintain it to a level which does not interfere with the operation, maintenance or upgrading of the z/OS Cloud Complex. DVLA is responsible for the risk of running such unsupported software.

for all ISV software for which DVLA is the licensee:

ensure that the license to use such ISV software is in compliance with the Sub Capacity License Agreement;

ensure that the license to use such ISV software permits use on any of the Servers within the z/OS Cloud Complex, and charging is based on aggregated use across the z/OS Cloud Complex including, if applicable, use across multiple Servers in a load balancing Sysplex;

ensure that the software authorization process to use such ISV software is not dependent on keys or other mechanisms that are dependent on hardware specific information such as hardware model, software model or serial number. Where this is not possible and software keys containing hardware specific information are required to execute ISV software, make available to Kyndryl at all times, keys for each of the Servers in the z/OS Cloud Complex;

make any changes necessary as a result of a Kyndryl change to the z/OS Service Criteria set forth in the z/OS Cloud Service Plan;

agree to allow Kyndryl to perform HW maintenance of the Servers within the z/OS Cloud Complex in accordance with such z/OS Cloud HW Maintenance Schedule in the z/OS Cloud Service Plan.

within thirty (30) days of receipt by DVLA of an updated z/OS Cloud HW Maintenance Schedule, DVLA may raise any reasonable concerns it has with such z/OS Cloud HW Maintenance Schedule and Kyndryl will give due consideration to any such objection and may, but shall not be obliged to, make changes to the z/OS Cloud HW Maintenance Schedule;

ensure that DVLA Components are compatible with the Base Components;

procure and provide DVLA Components and be responsible for all applications software related services, such as:

acquisition and asset management;

maintenance (including upgrades as required to maintain applications software currency) in accordance with the Base Components currency requirements;

performance and tuning;

testing and user acceptance;

help desk support for DVLA’s end users;

change management and scheduling including coordinating applications software change management and the associated integration with z/OS Cloud shared environment change management and z/OS Cloud Maintenance Windows; and

third party supplier and associated contract management including vendor interface for incident management/resolution.

register all DVLA Components with the applicable vendors, in accordance with the applicable vendor’s license terms and conditions and adhere to all vendor license terms and conditions;

on or before five (5) days from the termination or expiration of this Call-Off Contract, remove and/or erase DVLA Components from any Servers and disk space that Kyndryl provides as Base Components. If DVLA does not remove and/or erase DVLA Components within such period, Kyndryl may:

move any and all DVLA Components to storage and charge DVLA all associated costs; and

erase all DVLA Components from such Servers and disk space without any liability to DVLA.

if at the time of contract signature, the LPARs hosting DVLA’s applications are not running at z/OS Cloud compatible Software Levels stated in the z/OS Cloud Service Plan then, prior to migrating the DVLA LPAR to a Server in the z/OS Cloud Complex, DVLA assumes financial and technical responsibility for upgrading the software to compatible levels, or for running software that is either unsupported or requires separate version licenses than provided by z/OS Cloud. DVLA and Kyndryl must agree on a plan to migrate to the z/OS Cloud Software Levels within 12 months of Commencement Date. DVLA must test their LPARs and applications to determine the status of their support for the z/OS Cloud Software Levels;

If DVLA’s systems should fail such tests, DVLA shall be responsible for the cost of all changes to DVLA’s applications and systems as are reasonably required to pass such a test, and Kyndryl’s reasonable costs in re-testing DVLA’s applications and systems.

If at any time any of DVLA’s LPARs fails to satisfy the z/OS Cloud Service Criteria, through no fault of Kyndryl, and such failure either:

hinders, or prevents the normal operation, maintenance, or upgrading of any server in the z/OS Cloud Complex, Kyndryl may, in its’ sole discretion, and upon six month prior written notice to DVLA, move DVLA’s LPARs to a dedicated mainframe server, and DVLA shall pay Kyndryl’s reasonable charges for any additional hardware, software and/or services required to perform such a move or to operate DVLA’s LPARs on such dedicated mainframe server; or

materially increases the cost to Kyndryl of keeping any or all of DVLA's LPARs within the z/OS Cloud Complex, then Kyndryl shall be entitled to make such additional Charges as are reasonable in the circumstances. For example, if additional software costs are incurred as a result of non-current DVLA software then DVLA will be liable to pay for such charges.

procure and provide network access from DVLA’s site to the Kyndryl Data Centre to enable DVLA Components to run in the z/OS Cloud and retain responsibility for all DVLA network management.

* + 1. Ongoing Services and Support Responsibilities
			1. z/OS Cloud Capacity Management

Kyndryl will:

when requested via the Change Management Process, increase or decrease Assigned Resource Units as set forth in Appendix B, (z/OS Cloud Charges, Contractual Baselines and Rates).

DVLA will:

provide and maintain a twelve (12) month rolling forecast of anticipated monthly capacity needed (“Forecasted Monthly Usage” or “FMU”) which will include forecasted usage of z/OS Cloud Resource Units for the coming twelve (12) months including;

the total MIPS capacity required by each of DVLA’s LPARs by service type;

the disk capacity required by service type;

the software capacity required by each of DVLA’s LPARs;

any short term MIPS resource requirements and dates required;

the tape capacity required by tape service type; and

forecast of growth in use of network cards and FICON I/O cards.

specify each of DVLA’s LPAR(s) to either a Hard Cap, or a Soft Cap. If Soft Cap, also specify whether LPAR(s) may also be assigned to a Group Soft Cap; and

request any increase or decrease in Resource Units or changes in capping or other resources via the Change Management Process.

* + - 1. z/OS Cloud Server Maintenance and Outages

The z/OS Cloud Maintenance Schedule will be made available to DVLA by Kyndryl in the z/OS Cloud Service Plan and reviewed by DVLA and Kyndryl as needed during scheduled service review meetings.

A z/OS Cloud Server Outage occurs whenever any Server within the z/OS Cloud Complex on which one or more of DVLA’s LPARs resides is to undergo maintenance in accordance with the z/OS Cloud Maintenance Schedule; or suffers a hardware failure which prevents or materially hinders the running of one or more of DVLA’s LPARs; or is stopped at the request of DVLA for their LPARs.

At the commencement of a z/OS Cloud Server Outage, Kyndryl will:

for a Standard LPAR, shut down the Standard LPAR on the Primary Server affected by the outage; and

At the end of the z/OS Cloud Server Outage, Kyndryl will:

restart the Standard LPAR on the Primary Server;

* + - 1. z/OS Cloud Resource Units (RU)

The following Resource Units are used to measure z/OS Cloud resources assigned to DVLA:

Server Processor LPAR MIPS

The RU for the Server processor LPAR resource shall be the MIPS specified in the z/OS Cloud Contractual Baseline.

If required for ISV purposes, Kyndryl will collect SMF Record types 70 and 89 and report the Peak 4 Hour Rolling Average using SCRT or another mutually agreeable reporting tool or process. The SCRT monthly measurement period shall begin at 12:00AM the second day of the month through 11:59PM on the first day of the following month.

Optional Software Stacks LPAR MIPS:

The RU for the optional software stacks resource shall cover the following optional z/OS Cloud software stacks:

CICS

IMS

MQ

The RU for this resource shall be the MIPS utilized, defined as the maximum number of MIPS consumed by the combination of all DVLA LPARS in which the optional software stack is running.

Kyndryl shall use the Sub-Capacity Reporting Tool (SCRT), or another mutually agreeable replacement, to determine the Peak Four (4) Hours Rolling Average monthly usage for MIPS utilized. The SCRT monthly measurement period shall begin at 12:00AM the second day of the month through 11:59PM on the first day of the following month.

Disk Space (DASD) Gigabytes:

The RU for the disk space resource category shall be the number of DASD Gigabytes assigned by Kyndryl to DVLA LPAR(s). DASD Gigabytes include all space (e.g. assigned, used, free, work, and system) and will be viewed at the full volume level.

Kyndryl will periodically run the z/OS DFSMS Data Collection Facility (DCOLLECT) to gather and report on Gigabytes assigned to DVLA.

The monthly measurement period shall begin at 12:00AM the first day of the month through 11:59PM on the last day of the month.

Virtual Tape System (VTS) Terabytes:

The RU for the VTS resource category shall be the number of VTS Terabytes assigned by Kyndryl to DVLA LPAR(s). VTS Terabytes include all space (e.g. assigned, used, free, work, and system) and will be viewed at the full volume level.

Kyndryl will periodically gather and report on Terabytes assigned to DVLA.

The monthly measurement period shall begin at 12:00AM the first day of the month through 11:59PM on the last day of the month.

Increments for Increases or Decreases in Resource Units:

The minimum increases/decreases for any change are as follows:

MIPS are rounded to nearest MSU equivalent as per the MSU to MIPS conversion set forth in Section 4.4. The increment for increases or decreases will be 2 MSU;

disk storage is allocated in volumes. Increases or decreases will be in increments of 200GB rounded at closest full volume boundary; and

tape storage increases or decreases will be in Terabyte increments (Terabytes will be rounded up to the closest Terabyte E.g, 10.6TB will be charged as 11TB).

* + - 1. Conversion of MSU to MIPS

Certain components, such as the Peak 4 Hour Rolling Average and Capping definitions are based on Million of Service Units (MSU). In all cases where conversion from MSU to MIPS is required, IBM’s Large System Performance Reference (LSPR) table, based on running multiple LPARS, will be used to determine the MSU to MIPS conversion ratio.

The LSPR table is located at:

<https://www.ibm.com/support/pages/ibm-z-large-systems-performance-reference>

The conversion calculation from the LSPR table is: PCI / MSU = MSU to MIPS Conversion Ratio

Kyndryl and DVLA agree to use the above conversion process regardless of DVLA’s exact workload mix (e.g. online vs. batch) or the processor model Kyndryl chooses to use as the z/OS Cloud host processor.

Over time, as new operating system software is released, the ratios in LSPR tables may change. Kyndryl and DVLA agree to use the LSPR table most reflective of the current level of z/OS operating in DVLA LPARs.

* + - 1. z/OS Cloud LPAR Definitions and Capping Options

DVLA may choose how Kyndryl will define the LPAR(s) capacity requirement from the following options per LPAR.

Soft Cap

DVLA LPAR(s) will be configured such that usage will not be allowed to exceed the agreed to Peak 4 Hour Rolling Average for defined capacity over the course of the measurement period.

using Soft Cap, z/OS will allow the DVLA LPAR(s) to instantaneously spike above the defined capacity for a limited duration. The duration of the spike is managed by System z and z/OS so that the actual Peak 4 Hour Rolling Average does not exceed the defined capacity for the DVLA LPAR.

regardless of the number of times, or amount of MIPS z/OS allows DVLA LPAR(s) to consume above the defined capacity, MIPS Resource Unit billing for processor usage will remain based on the Soft Cap as set forth in the z/OS Cloud Contractual Baseline.

the Soft Cap may be applied individually to each DVLA LPAR, or may be defined as a Group Soft Cap which covers all Soft Cap assigned DVLA LPARs, that are defined as a group, and allows sharing of MIPS within the Soft Cap across all DVLA LPARs in that group.

in a Group Soft Cap, z/OS will allow the Soft Cap DVLA LPARs to exceed the group’s defined capacity as long as that does not raise the overall Peak 4 Hour Rolling Average for the group’s total defined capacity. Like Soft Cap, the Group Soft Cap can have an instantaneous spikes but the duration will be limited so as to confine the DVLA into the defined group capacity during any 4 hour rolling time period.

Hard Cap

Hard Cap technology does not allow an LPAR to exceed its defined cap (as specified in DVLA’s z/OS Cloud Contractual Baseline). Certain software vendors may require this type of capping.

MIPS Resource Unit billing for processor usage will remain based on the Hard Cap as set forth in the z/OS Cloud Contractual Baseline.

* 1. The Managed Service
		1. Introduction

This Statement of Work for Kyndryl’s Mainframe Managed Services, consists of Kyndryl's provision of certain managed services with respect to Kyndryl zCloud (hereinafter the “Services”) to DVLA.

The Services include but are not limited to Kyndryl providing monitoring and system administration related support services to DVLAs mainframe systems.

The services are provided on the following Operating System platforms: z/OS and associated subsystems, CICS, IMS, MQ as well as the mainframe network and mainframe storage device.

* + 1. Base Services
			1. Service Management

Kyndryl will designate a Service Manager, who will coordinate any Kyndryl Services modifications, incident resolution and conditions of Services updates. He or she will also review the Service Report with DVLA The Service Management role will be a UK resource for the period of this contract.

* + - 1. Systems Operations

Kyndryl will use its skills in accordance with proven Kyndryl practices to provide system operations support in response to incidents they have identified or requests notified to our Front Desk by DVLA, DVLA Key Users, their backup, the DVLA helpdesk or via System Monitoring.

* + - 1. Systems Administration

Kyndryl will use its skills in accordance with proven Kyndryl practices to provide proactive and scheduled systems administration support.

* + - 1. Technical Support

Kyndryl will use its skills in accordance with proven Kyndryl practices to provide technical support. The Kyndryl technical support staff will provide support to DVLA operations in response to incidents they have identified and/or requests notified to our Service Manager. This will include, but is not limited to the following:

1. Planning and installation of upgrades/new software, including some local customisation when required
2. Install, setup, test and implement z/OS releases, approximately every two years as agreed between DVLA and Kyndryl
3. Apply planned maintenance in alternate years with upgrade
4. Apply preventive maintenance to Kyndryl managed ISV mainframe software as required and agreed between DVLA and Kyndryl
5. Install, setup, test and implement Kyndryl managed ISV products driven either by need to resolve incidents or stay current, where a fix is available
6. Management of system & software configurations (via change control)
7. Manage mainframe disk space usage
8. Monitor and maintain the storage catalogue
9. Ensuring that all work is actioned in accordance with security standards
10. Provide input to the planning of Disaster Recovery tests when required
11. Support Disaster Recovery tests
12. Creation and maintenance of mainframe support documentation, including mainframe Disaster Recovery procedures. Update documentation and procedures to reflect significant changes to live systems
13. Should the Primary or Secondary zCloud site fail or be unavailable to store the 2nd copy of the DVLA data, via the Kyndryl supplied VTS backups, then DVLA will take flat file copies of the data they require to disk and then file transfer it to DVLA in a format that can be read by their applications. DVLA will add this to their processes in DR test or invocations
14. Tuning of systems/software to improve performance
15. Manage operating systems IPL procedures
16. Investigate performance events and where specific issues are diagnosed, undertake corrective action within Kyndryl’s remit
17. Support the system software and middleware products that are installed as defined in Appendix C. Support for any subsequent software installation will be subject to the RFS process
18. Plan and support mainframe related hardware installations and upgrades
19. Maintain the mainframe automation environment
20. Maintain the mainframe network configuration
	* 1. Additional Services
			1. Extended Hours Service

This Additional service provides extended hours of Technical Support for the purpose of fixing Priority 1-2 Incidents, outside of the normal Hours of Service Operation as defined in the SOW only with Production systems.

* + - 1. Backup Management Service

This Additional Service provides the management of the backup solution for the DVLA Configuration. For the avoidance of doubt it does not provide a disaster recovery service.

* + - 1. Operating System Patch Administration Service

This Additional service provides patching of DVLA server(s) operating system with patches and fixes supplied and recommended by the operating system vendor to assist in the prevention of future incidents and/or to improve system security.

* + - 1. System Software Upgrade Service

Kyndryl will apply up to one major upgrade in the DVLA Configuration per contract year to the levels of the hardware, operating System Software and licensed program products as required to keep them in line with those defined in the zCloud Service Plan.

* + - 1. Batch Management

Kyndryl will administer batch schedules in the z/OS batch scheduling tool as instructed by DVLA.

* + 1. Documentation
			1. Operational Documentation

This documentation will include but not be limited to:

1. The DVLA Configurations for which the Services are provided;
2. contact names and phone numbers;
3. DVLA recovery procedures;
4. operational standards;
5. incident and change management procedures; and
6. network access and ”act on behalf of DVLA” authorisation letters.
	* + 1. Service Report

This report will detail the services utilisation since the start of the Services or the last Service Report whichever is most recent. Such detail will include but not be limited to:

1. Incident summary report
2. Planned system changes
3. Amendments agreed under Change Control to the Operational Documentation such as:

The DVLA Configurations for which the Services are provided;

* + - * + contact names and phone numbers;
				+ DVLA recovery procedures;
				+ operational standards;
				+ incident and change management procedures; and

network access and ”act on behalf of DVLA” authorisation letters.

1. Kyndryl standard performance and capacity reports covering: CPU usage, memory usage and disk space utilisation. The information will be summarised in a graphical format.
	* 1. Changes

Any changes to the SOWs, including but not limited to, changes in the DVLA Configuration, its location or other services not specified in the SOW, including the addition of Additional Services or any change to the existing Services, will be handled through a mutually agreed change authorisation procedure. A written Change Authorisation (using the pro forma in section 3.8 of this Schedule or the Variation Form in Schedule 9 (Variation Form) of the Call-Off Contract) must be signed by both parties to authorise implementation of the agreed changes.

* + 1. Software Required Consents and Indemnity

DVLA shall be responsible for promptly obtaining and providing to Kyndryl all Required Consents necessary for Kyndryl to access, use and/or modify software, hardware, firmware and other products used by DVLA for which Kyndryl shall provide Services hereunder. A Required Consent means any consent or approval required to give Kyndryl and Kyndryl’s subcontractors the right or license to access, use and/or modify (including creating derivative works of) DVLA or a third party's software, hardware, firmware and other products used by DVLA without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products.

DVLA agree to indemnify, defend and hold Kyndryl and Kyndryl affiliates harmless from and against any and all claims, losses, liabilities and damages (including reasonable attorneys' fees and costs) arising from or in connection with any claims (including patent and copyright infringement) made against Kyndryl alleged to have occurred as a result of DVLA failure to provide any Required Consents.

Kyndryl shall be relieved of the performance of any obligations that may be affected by DVLA failure to promptly provide any Required Consents to Kyndryl.

Any standard programs Kyndryl uses in providing the Services to DVLA, for which Kyndryl is not the licensee (except for licenses procured from Kyndryl by DVLA, which Kyndryl shall agree to access and use them for the Services) DVLA agree to:

obtain the right (as of the Effective Date) for Kyndryl to access and use them, and

be responsible for procuring new versions and releases for such standard programs, as described below.

The party licensed to use the programs for which the Services are provided agrees to obtain and install, at its own cost, a new version or release of those programs no later than twelve (12) months following the date the licensor makes such version or release generally available. Should the program be licensed by DVLA, DVLA shall ordinarily agree to Kyndryl performing the work (as DVLA service provider) and the Change Management Process shall take precedent in managing this.

However, if either of the parties requests that the other delays such update, the other party will do so unless it:

is prevented from taking advantage of technological advancements in the industry; or

incurs additional costs (for example, multiple version charges). In such case, the requesting party will either update the programs or reimburse the other party for any increased costs.

* + 1. Project Change Control

The following provides a detailed process to follow if a change to this SOW or the Call-Off Contract is required:

A Project Change Request (PCR) pro forma is in Section 3.8. The Parties may also use the pro forma Variation Form in Schedule 9 (Variation Form) of the Call-Off Contract, which may be adapted as necessary to align with the agreed Change Management Process. The PCR (in either form) will be the vehicle for communicating change. The PCR must describe the change, the rationale for the change and the effect the change will have on the Project.

The requesting party’s Service Manager or Focal Point, as the case may be, will review the proposed change and determine whether to submit the request to the other party.

Both the Service Manager and the Focal Point will review the proposed change and approve it for further investigation or reject it. The Service Manager will notify DVLA of any charges for such investigation. If the investigation is authorised, the Service Manager and the Focal Point will sign the PCR, which will constitute approval for the investigation charges. Kyndryl will invoice DVLA for any such charges. The investigation will determine the effect that the implementation of the PCR will have on price and any other terms and conditions.

A written Change Authorisation must be signed by both parties to authorise implementation of the investigated changes.

* + 1. Project Change Request Form

The PCR is a form that will be filled out and submitted by either of the two parties to the Kyndryl project manager.

|  |
| --- |
| **Project Change Authorisation Request Form** |
|  | PCR No. |
| **Project Change Request** |
| Subject: |
| Submitted By: | Date: |
| Description of Proposed Change: (Add attachments if necessary) |
| **Investigation** |
| Fixed Price To Investigate: |
| ( ) Accept for Investigation( ) Reject for Investigation | Kyndryl Signature: | Date: |
| ( ) Accept for Investigation( ) Reject for Investigation | DVLA Signature: | Date: |
| Reason for Rejection (Add attachments, if necessary) |
| The above estimate will be withdrawn if not accepted by: / / |
| Implementation: |
| Description & Impact of Change To Be Implemented: (Add attachments, if necessary)Fixed Price, or Time and Materials to Implement the Changes:  |
| 1 This Variation must be agreed and signed by both Parties to the Call-Off Contract and shall only be effective from the last date of signature accepting the Variation for implementation.2 Words and expressions in this Variation shall have the meanings given to them in the Call-Off Contract. 3 The Call-Off Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation. |
| ( ) Accept for Implementation( ) Reject for Implementation | Kyndryl Signature: | Date: |
| ( ) Accept for Implementation( ) Reject for Implementation | DVLA Signature: | Date: |
| The above estimate will be withdrawn if not accepted by: / / |

* + 1. Security

DVLA agrees to:

* + - * 1. be solely responsible for:

the results obtained from the use of the Services as well as all machines and programs provided by DVLA;

determining that the security measures specified in the SOW constitute appropriate technical and organisational measures to protect DVLA data and software used in Kyndryl’s performance of the Services (e.g. measures against access by unauthorised persons during transmission of data). Kyndryl is not required to perform or to adhere to any security measures concerning DVLA data and software other than those specified in this SOW;

correcting all invalid destination transmission errors and data corruption or security incidents with the DVLA Data; and

the content of any date file, the selection and implementation of controls of its access and use and the security of stored data; not providing any harmful code to Kyndryl,

* + - * 1. retain source documents and maintain a procedure that will allow DVLA to recover DVLA Data without resort to the system; and
				2. obtain any third party approvals for the transmission of data.

4. Value Add Modernisation Advice

Kyndryl values the ongoing relationship with DVLA. In order to explore additional Kyndryl capabilities or services that could support DVLA in its ongoing modernisation programmes, as part of this SOW, Kyndryl will provide up to 20 days of digital advice to DVLA.

* 1. UK zCloud Service Plan

The information provided in this Service Plan includes:

* zCloud Service Criteria
* Software currency
* Hardware currency
* zCloud Maintenance Schedule

The Service Criteria is information to assist in the understanding of key zCloud requirements in order to develop plans to ensure the continued compliance with the zCloud Service Criteria.

The zCloud Service Criteria include items that zCloud clients must continually comply with while operating within the zCloud infrastructure.

This Service Plan is also used to give the notice of changes to the zCloud Service Criteria as stipulated in the zCloud Statement of Work and/or contract.

The current 2025 Service Plan has already been shared with the DVLA and any future updates will be provided as published by the Kyndryl Client Partner or Delivery Partner.

* 1. z/OS Cloud Charges, Contractual Baselines and Rates
		1. z/OS Cloud Contractual Baselines and Rates

Kyndryl and DVLA agree that the z/OS Cloud Contractual Baselines are set forth as below

| **Baseline** | **Value / Units** |
| --- | --- |
| MIPS – Production + Dev/Test | 213  |
| MIPS – zIIP | 1 zIIP engine shared for a max peak of 1,600 MIPS |
| GBs (Disk) Service Type: Standard | 3,488  |
| Number of Live LPARs | 4 |
| LPAR Service Type: Standard | 1 Production3 Non-production |
| Number of Virtual Tape Drives | Minimum 2 Maximum 160 |
| TBs (VTS) – cache | 110  |
| TBs (VTS) – tapes (TB) | 0  |
| Number of Disaster Recovery LPARs | 4 |
| Recovery Point Objective | RPO <1m |
| Recovery Time Objective | RTO <4hrs |
| DR Disk Service Type: Global Mirror | Shared cross Data Centre link |
| z/OS Cloud Tape Type : Virtual Tape | VTS data is replicated to DR site. |
| Volume of incidents PCM | 6 |
| MIPS – DR | 213 |
| GBs (Disk) with a total of 3 copies – DR | 10,464 |
| TBs (DR VTS) – cache | 40 |
| TBs (DR VTS) - tapes (TB) | 100 |
| Annual baseline for the Total z/OS MSUs Consumed for Broadcom Software | 80,314 MSU Hours |

* + 1. z/OS Cloud Contractual Baseline Service Types

The z/OS Cloud Contractual Baselines included in Appendix B-1 are established in the following z/OS Cloud Service Types for both Soft Capped and Hard Capped LPAR’s:

z/OS Cloud LPARs

* Standard LPAR

z/OS Cloud Disk Storage

* Standard Disk

FlashCopy

* Global Mirror

z/OS Cloud Tape

* Virtual Tape

z/OS Cloud Software Stacks

* ZOS Stack
* CICS Stack
* IMS Stack
* MQ Stack
* COBOL Stack
* Session Manager Stack

Omegamon Stack

The Service Types indicated in the section B-2 above will be assigned to DVLA.

* + 1. Forecasted Monthly Usage Process

Based on the volumes set forth in the z/OS Cloud Contractual Baselines as of the contract Effective Date, DVLA will submit on a monthly basis, on or before the 28th of each month, an updated rolling twelve (12) month z/OS Cloud Forecasted Monthly Usage (“FMU”) for each Service Type along with any change request to increase or decrease Assigned Resource Units for the next month or months. Such FMU capacity forecast shall at all times provide a prediction of the capacity required over the succeeding twelve (12) month rolling period. Kyndryl shall use DVLA FMU to plan resources for DVLA’s use in the future. Changes to the number of resources assigned to DVLA will be made once DVLA has submitted a change request through the Change Management Process.

During the Term, DVLA may modify its resource requirements by a maximum of 20% above the monthly z/OS Cloud Contractual Baselines or up to 20% below the monthly z/OS Cloud Contractual Baseline (as of the Effective Date and as set forth originally in section B-1 above) through the use of the flex adjustments described below. Should a z/OS Cloud change request exceed the specified percentage above, the parties agree to review the charges, z/OS Cloud Contractual Baselines, unit rates, and ARC rates charged to DVLA. Such changes shall be handled through the Change Management Process and shall be subject to mutual agreement.

* + 1. Adjustments to the z/OS Cloud Resource Units: Flex Up and Flex Down

To flex resources up and down from DVLA’s monthly z/OS Cloud Contractual Baselines as of the contract Effective Date and set forth originally in section B-1, DVLA shall submit a request through the Change Management Process.

* + - * 1. for flex up increases up to 10% above the monthly z/OS Cloud Contractual Baselines.

through the use of the Change Management Process described in Section B-3 above, DVLA may, at its sole discretion, increase its Assigned Resource Units up to a total of 10% over the monthly z/OS Cloud Contractual Baselines as of the contract Effective Date and set forth originally in section B-1. That is, if the monthly z/OS Cloud Contractual Baselines MIPS was 120, then DVLA may increase the Assigned Resource Units MIPS up to a total of 132MIPS, in a shorter timeframe than b (1) or c (1) below, where possible.

* + - * 1. for flex up increases between 10% and 20% of the z/OS Cloud Contractual Baselines.

through the use of the Change Management Process described in Section B-3 above, DVLA may at its sole discretion, increase its Assigned Resource Units between 10% to 20% above the monthly z/OS Cloud Contractual Baselines as of the contract Effective Date and set forth originally in section B-1. Requests for such increases normally require three (3) months notice. However, Kyndryl will make commercially reasonable efforts to assign such increases in a shorter timeframe, subject to capacity being available. Kyndryl will provide a quotation for the increase in Assigned Resources to DVLA. That is, if the z/OS Cloud Contractual Baselines MIPS was 120, then DVLA may increase the Assigned Resource Units MIPS up to a total of 144MIPS.

* + - * 1. for flex up increases above 20% of the monthly z/OS Cloud Contractual Baselines.

in the event DVLA’s change request includes increases above 20% of the z/OS Cloud Contractual Baselines as of the contract Effective Date and set forth originally in section B-1, such increases will require three (3) months’ notice if hardware provisioning is required and may warrant equitable adjustments to the z/OS Cloud Contractual Baselines, unit rates, ARC rates and charges. Such requests shall be subject to mutual agreement. Once agreed, Kyndryl will make commercially reasonable efforts to assign the agreed increases in a shorter timeframe, subject to capacity being available.

* + - * 1. flex down decreases to the Assigned Resource Units may be requested using the Change Management Process; but DVLA may not decrease in its Assigned Resource Units by more than 20% below the monthly z/OS Cloud Contractual Baseline in effect as of the contract Effective Date. That is, if a z/OS Cloud Contractual Baseline is 100, and the Assigned Resource Unit percentage Cap is <20%>, then DVLA may decrease the assigned MIPS and the Cap to no lower than 80 through this process.
		1. Charges and Invoicing

DVLA will be charged monthly for the z/OS Cloud Service.

Adjustments to the charges will be made in arrears and calculated as described in the Additional Resource Charge (ARC) section below.

**zCloud Baseline Charges**

The tables below outline the charges for the operational managed services (z-Cloud Service).

|  |  |  |
| --- | --- | --- |
| **Invoice Date**  | **Service Period**  | **Total**   |
| August-25 | 16th Aug 2025 – 31st Aug 2025 |  **£ 244,952.54**  | (ex. VAT)  |
| September-25 | 1st Sep 2025 – 30th Sep 2025  |  **£ 435,140.29**  | (ex. VAT)  |
| October-25 | 1st Oct 2025 – 31st Oct 2025  |  **£ 435,140.29**  | (ex. VAT)  |
| November-25 | 1st Nov 2025 – 30th Nov 2025  |  **£ 462,932.12**  | (ex. VAT)  |
| December-25 | 1st Dec 2025 – 31st Dec 2025  |  **£ 462,932.12**  | (ex. VAT)  |
| January-26 | 1st Jan 2026 – 31st Jan 2026  |  **£ 462,932.12**  | (ex. VAT)  |
| February-26 | 1st Feb 2026 – 29th Feb 2026  |  **£ 435,140.29**  | (ex. VAT)  |
| March-26 | 1st Mar 2026 – 31st Mar 2026  |  **£ 435,140.29**  | (ex. VAT)  |
| April-26 | 1st Apr 2026 – 30th Apr 2026  |  **£ 435,140.29**  | (ex. VAT)  |
| May-26 | 1st May 2026 – 31st May 2026 |  **£ 435,140.29**  | (ex. VAT)  |
| June-26 | 1st Jun 2026 – 30th Jun 2026  |  **£ 435,140.29**  | (ex. VAT)  |
| July-26 | 1st Jul 2026 – 31st Jul 2026  |  **£ 435,140.29**  | (ex. VAT)  |
| August-26 | 1st Aug 2026 – 15th Aug 2026  |  **£ 244,952.54**  | (ex. VAT)  |
|   |   |   |   |
|   | **TOTAL:**  |  **£5,359,823.79**  | **(ex. VAT)** |

**Invoicing**

The following shall apply:

1. At the beginning of each calendar month, Kyndryl will issue an invoice for the z/OS Cloud charges, for that calendar month, that will include the following items as appropriate
	1. the charges for the zCloud Contractual Baselines as set out in the zCloud Baseline Charges table above
	2. any Additional Resource Charges (ARC) from the prior month as outlined below;
	3. other additional charges as incurred; and
	4. any applicable taxes
2. Payment will be due 30 calendar days after the receipt of the invoice.

**Other Charges**

If at any time any of DVLA’s LPARs fails to satisfy the DVLA responsibilities or z/OS Cloud Service Criteria as set forth in the z/OS Cloud Service Plan, through no fault of Kyndryl, and such failure either:

1. hinders, or prevents the normal operation, maintenance, or upgrading of any Server in the z/OS Cloud Complex, Kyndryl may, in its sole discretion, and upon six month prior written notice to DVLA, move DVLA’s LPARs to a dedicated mainframe server, and DVLA shall pay Kyndryl’s reasonable charges for any additional hardware, software and/or services required to perform such a move or to operate DVLA’s LPARs on such dedicated mainframe server; or
2. materially increases the cost to Kyndryl of keeping any or all of DVLAs LPARs within the z/OS Cloud Complex, then Kyndryl shall be entitled to make such additional charges as are reasonable in the circumstances. For example, if additional software costs are incurred as a result of non-current DVLA software then DVLA will be liable to pay for such charges.

**Additional Resource Charges (ARC’s) Unit Pricing**

Additional Resource Charges (ARC’s) applicable to the hardware resources provided within Section B-1 and the IBM software listed in Section B-6.

The following table articulates the pricing for Additional Resource Charges (ARCs). The pricing is per Resource Unit (RU) per month, ex VAT. Baselines for the Resource Units are provided in Appendix B-1.

|  |  |  |
| --- | --- | --- |
| **Item** | **Charges per RU per Month (excluding VAT)** | **ARC Capacity Upper Limit** |
| Production MIPS – Per Std MIPS | £ 392.71 | +20% |
| DR MIPS – Per Std MIPS | £ 17.58 | +20% |
| Production DASD – Per GB | £ 0.62 | +20% |
| DR DASD – Per GB | £ 1.42 | +20% |
| Production VTS – Per TB | £ 53.51 | +20% |
| DR VTS – Per TB | £ 53.51 | +20% |

If DVLA ends this Call-Off Contract under clause 18.1 or the Supplier ends this Call-Off Contract pursuant to clauses 18.5 or 18.6, DVLA will indemnify the Supplier against any commitments, liabilities or expenditure which result in any unavoidable Loss by the Supplier.

The following Table details these costs for a given exit month. The Buyer acknowledges that these costs are not recoverable under insurance and are payable in full.

|  |  |  |  |
| --- | --- | --- | --- |
| Date of Termination | **Unavoidable Cost** | *o/w Unrecovered SW* | *o/w Other Unavoidable Cost* |
| August-25 |  **£ 2,801,848**  |  *£ 2,745,000*  |  *£ 56,848*  |
| September-25 |  **£ 2,586,321**  |  *£ 2,533,846*  |  *£ 52,475*  |
| October-25 |  **£ 2,370,794**  |  *£ 2,322,692*  |  *£ 48,102*  |
| November-25 |  **£ 2,155,268**  |  *£ 2,111,539*  |  *£ 43,729*  |
| December-25 |  **£ 1,939,741**  |  *£ 1,900,385*  |  *£ 39,356*  |
| January-26 |  **£ 1,724,214**  |  *£ 1,689,231*  |  *£ 34,983*  |
| February-26 |  **£ 1,508,688**  |  *£ 1,478,077*  |  *£ 30,610*  |
| March-26 |  **£ 1,293,161**  |  *£ 1,266,923*  |  *£ 26,238*  |
| April-26 |  **£ 1,077,634**  |  *£ 1,055,770*  |  *£ 21,865*  |
| May-26 |  **£ 862,107**  |  *£ 844,616*  |  *£ 17,492*  |
| June-26 |  **£ 646,581**  |  *£ 633,462*  |  *£ 13,119*  |
| July-26 |  **£ 431,054**  |  *£ 422,308*  |  *£ 8,746*  |
| August-26 |  **£ 215,527**  |  *£ 211,154*  |  *£ 4,373* |

* + 1. DVLA ISV Software to be licensed by Kyndryl

Version numbers (when provided below) are based upon the current inventory and may be superseded

| **Vendor** | **Product** |
| --- | --- |
| Mackinney Systems | CICS/Message |
| Mackinney Systems | CICS/Morning News |
| Blenheim International Ltd. | Adastrip / Adastrip zIIP |
| Macro4 | ColumbusZ |
| Broadcom / Computer Associates | Flexible Storage Suite, including:One Tape Management |
| Broadcom / Computer Associates | Common Services for z/OS and OS/390 (not separately licenced as this is a supporting application for the Broadcom installation) |
| Broadcom / Computer Associates | Mainframe DevOps Suite, including:InterTest for CICSSymDump for CICS |
| Broadcom / Computer Associates | MIM Resource Sharing for z/OS Plus MSU, including:MIA Tape SharingMII Data Sharing |
| Broadcom / Computer Associates | Netspy Network Performance  |
| Broadcom / Computer Associates | JCL Workload Automation, including:CA JCL Check |
| Broadcom / Computer Associates | Watchtower Platform Suite, including:OPS/MVS Event Management & Automation for JES2Sysview Performance Management |
| Broadcom / Computer Associates | Output Management Suite for z/OS, including:ViewView Extended Retention OptionView TSO/SPF/ISPF Interface (It's a Free Option from CA) |
| IBM | IMS Database Manager |
| IBM | Websphere MQ for z/OS |
| IBM | Enterprise Cobol |
| IBM | OS/VS COBOL Compiler and Library |
| IBM | VS COBOL II V1.4 |
| IBM | CL/Supersession |
| IBM | PSF for z/OS |
| IBM | DFSMS dsshsm |
| IBM | DFSORT |
| IBM | Infoprint Server |
| IBM | RMF |
| IBM | Security Server |
| IBM | z/OS |
| IBM | CICS TS for z/OS |
| IBM | IBM Workload Scheduler |
| IBM | IBM OMEGAMON XE CICS |
| IBM | TIV MGMT SERVICES Z/OS |
| IBM | IBM Ported Tools |
| IBM | CICS Performance Analyzer |
| IBM | File Manager |
| IBM | Standard Utilities |

* + 1. DVLA ISV Software to be licensed by DVLA (DVLA Components)
1. This lists the software that DVLA is to provide for use in the z/OS Cloud environment.

| **Vendor** | **Product** |
| --- | --- |
| Software AG | Adabas CICS Interface |
| Software AG | ADABAS/MVS |
| Software AG | ADABAS Coordinator |
| Software AG | ADABAS DELTA SAVE |
| Software AG | ADABAS Vista |
| Software AG | ADABAS On-line Services |
| Software AG | EntireX |
| Software AG | Natural Adabas Interface |
| Software AG | Natural for MVS |
| Software AG | Natural CICS Interface |
| Software AG | Natural Optimizer Comp. |
| Software AG | Natural Security |
| Software AG | Natural Connection |
| Software AG | Natural Development Server |
| Software AG | Systems Maintenance Aid |
| Software AG | Authorised Service Manager |
| Software AG | Predict Software |
| Software AG | Review |
| TREEHOUSE | N2O 3GL |
| TREEHOUSE | N2O |
| TREEHOUSE | DPSync (RRDF from Enet) |
| TREEHOUSE | DPS |
| TREEHOUSE | tRelational |

B – 8: Broadcom Licence

Although the contract term of this Call-Off Contract is 12-months, the contract term for the Broadcom licence held by Kyndrylis 48-months. This means that should the DVLA require any future extension(s), subject to the parties mutual agreement, beyond the initial 12-months and up to the maximum 48-months, calculated from the Start Date of this Call-Off Contract, then there will be no further charges for the Broadcom licence should the products in scope and utilisation volumes remain the same. A reasonably necessary number of copies of the Broadcom mainframe software may be made for such disaster recovery purposes and the use of such copies at another machine provided the use of such copies shall be limited to

* + - * 1. Conducting limited testing of the DR plan’s procedures and effectiveness so long as z/OS is not actively running except during such testing and such testing is limited to the duration and frequency shown in section 2.2.2
				2. The period subsequent to the occurrence of an actual disaster during which Kyndryl cannot operate the Broadcom mainframe software in normal operations at the Primary Site and must invoke its DR plan
	1. Service Level Agreement and Key Performance Indicators
		1. The z/OS Cloud Service Availability SLA

The Service Availability SLA will be measured from the Operating System by Kyndryl. Service Availability is defined as follows:

99.9% availability from unplanned outages (any outage other than a planned maintenance period) during operating hours for the following components:

* Kyndryl Production data centre
* Kyndryl Production LPAR server and storage hardware
* Kyndryl Production LPAR operating system and database software

Operating hours for the measured systems will be Monday to Sunday, 00.00-23:59, excluding maintenance windows. The measurement will be for a calendar month and calculated on a monthly basis. Measurements exclude planned maintenance periods. These are published by Kyndryl up to 2 years in advance and require an approximately 5 hour outage to Production and other LPARs each month. The Standard LPAR solution means that the planned maintenance Windows have to be taken without exception. The maintenance Windows for 2025 and 2026 are included in zCloud Service Plan.

* + 1. Service Level Credits

In the event that, directly due to Kyndryl’s default, Kyndryl fails to meet the target Service Availability levels in any month, Kyndryl will provide service credits in accordance with the provisions of this clause. Any credit will be applicable to the z/OS charges for that month and deducted from the next payment invoice (after the root cause analysis has been completed where necessary). The z/OS monthly charge will be one third of the quarterly z/OS service charge.

If Kyndryl fails to meet the target Service Availability in a single month, Kyndryl will pay a service credit of 6% of the z/OS monthly equivalent service charge.

* + 1. Excluded Events

The following exclusions apply:

* + - * 1. where there is a repeat Service Availability Level failure attributable to a single event then Kyndryl will issue a credit for the initial Service Availability Level failure only attributable to that event;

Service Level measurements exclude;

planned maintenance periods as provided by Kyndryl 12 months in advance,

weekly production Initial Programme Load (IPL) activity slots; and

any planned software maintenance which is approved via change management process

* + - * 1. Service Levels do not apply when disaster recovery is invoked or Kyndryl recommends that it is invoked until after the first successful DR test has been completed in which case C-3, d below will apply;
				2. Service Levels do not apply between the point of invocation of disaster recovery (or when Kyndryl recommends that it is invoked) and the point when the service is deemed to be running at the DR location; and
				3. Kyndryl is not responsible for any Service Credit, Service Level Failure or outage where the root cause analysis identifies the root cause was not as a result of an act or omission by Kyndryl under this Statement of Work, including:

any action or inaction by DVLA or its subcontractors;

any issues with out-of-support or down-level ISV software;

where the incident follows an ISV software upgrade which is identified as being the cause;

where the application or ISV software is identified as being the cause; and

as a result of Force Majeure

* + - * 1. Where Kyndryl proposes an incident fix and DVLA does not allow Kyndryl to implement the fix or delays the fix then Kyndryl will not be responsible for any Service Credit, Service Level Failure or outage, where the failure is a direct result of the prevention or delay in implementing the fix.
				2. Where Kyndryl propose a software patch and DVLA does not allow Kyndryl to implement the patch or delays the patch then Kyndryl will not be responsible for any Service Credit, Service Level Failure or outage, where the failure is a direct result of the prevention or delay in implementing the patch.
		1. Key Performance Indicators (KPIs)

**Response Time KPIs –** the two KPIs that Kyndryl will be required to achieve a >90% response time, are shown in the table below:

|  |  |  |  |
| --- | --- | --- | --- |
| **KPI** | **Priority and Level** | **Response time** | **Target** |
| 1 | Priority 1, Level 2 | <2hrs | 90% |
| 2 | Priority 2, Level 2 | <4hrs | 90% |

**Social Value KPI**

Kyndryl has a global commitment to carbon reduction and provides Mission Net Zero training for all its employees.

As a socially responsible organisation, Kyndryl in the UK and Ireland continues to evolve its employee Environmental, Social and Governance (ESG) literacy programmes through its ESG University and will target the following minimum number of employees completing Net Zero Certification in each of the reporting periods:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Reporting Period: | August to September 2025 | October to December 2025 | January to March 2026 | April to June 2026 | July to August 2026 |
| Number of UK and Ireland employees certified for the reporting period: | 10 | 20 | 20 | \* | \* |

Employee awareness programs will be in place to promote Mission Net Zero certification to achieve these targets, with Kyndryl’s ESG University in place throughput the current financial year.

\*The Social Value KPI for these reporting periods will be agreed by the parties during Q1 FY 2026.

Prior to any publication by the Buyer of the Supplier’s performance against the SLA’s and / or KPI’s, the Supplier will be consulted, and no publication will be made without the Supplier’s consent, such consent not to be unreasonably withheld or delayed.

## Schedule 2: Call-Off Contract charges

The Charges to be paid by the Buyer are set out in Appendix B of SOW in Schedule 1: Services.

## 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 warrants and represents that:

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

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

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

###

### 8. Limitation of liability

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

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

8.3 Subject always to clauses 8.1 and 8.2, the liability of the Buyer to any Collaboration Suppliers for all claims (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than if made fraudulently), breach of statutory duty or otherwise under this Agreement (excluding Clause 6.4, which will be subject to the limitations of liability set out in the relevant Contract) will be limited to [(£,000)].

8.4 Subject always to clauses 8.1 and 8.2, the liability of each Collaboration Supplier for all claims (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than if made fraudulently), breach of statutory duty or otherwise under this Agreement will be limited to [Buyer to specify].

8.5 Subject always to clauses 8.1, 8.2 and 8.6 and except in respect of liability under clause 6 (excluding clause 6.4, which will be subject to the limitations of liability set out in the [relevant contract] [Call-Off Contract]), in no event will any party be liable to any other for:

 8.5.1 indirect loss or damage

 8.5.2 special loss or damage

 8.5.3 consequential loss or damage

 8.5.4 loss of profits (whether direct or indirect)

 8.5.5 loss of turnover (whether direct or indirect)

 8.5.6 loss of business opportunities (whether direct or indirect)

 8.5.7 damage to goodwill (whether direct or indirect)

8.6 Subject always to clauses 8.1 and 8.2, the provisions of clause 8.5 will not be taken as limiting the right of the Buyer to among other things, recover as a direct loss any:

8.6.1 additional operational or administrative costs and expenses arising from a Collaboration Supplier’s Default

8.6.2 wasted expenditure or charges rendered unnecessary or incurred by the Buyer arising from a Collaboration Supplier's Default

###

### 9. Dispute resolution process

9.1 All disputes between any of the parties arising out of or relating to this Agreement will be referred, by any party involved in the dispute, to the representatives of the parties specified in the Detailed Collaboration Plan.

9.2 If the dispute cannot be resolved by the parties' representatives nominated under clause 9.1 within a maximum of 5 Working Days (or any other time agreed in writing by the parties) after it has been referred to them under clause 9.1, then except if a party seeks urgent injunctive relief, the parties will refer it to mediation under the process set out in clause 9.3 unless the Buyer considers (acting reasonably and considering any objections to mediation raised by the other parties) that the dispute is not suitable for resolution by mediation.

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

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

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

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

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

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

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

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

### 10. Termination and consequences of termination

10.1 Termination

10.1.1 The Buyer has the right to terminate this Agreement at any time by notice in writing to the Collaboration Suppliers whenever the Buyer has the right to terminate a Collaboration Supplier’s [respective contract] [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** |
|   |   |   |
|   |   |   |
|   |   |   |
|   |   |   |

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

## Schedule 4: Alternative clauses

### 1. Introduction

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

### 2. Clauses selected

2.1 The Buyer 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 Buyer 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 its best endeavours to ensure that in its employment policies and practices and in the delivery of the services required of the Supplier under this Call-Off Contract it 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 Buyer 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 Buyer 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 Term 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 Buyer 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 Buyer. 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 Buyer 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 Buyer 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 Buyer in relation to same.

### 2.6 Health and safety

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

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

2.6.3 The Supplier will notify the Buyer immediately in the event of any incident occurring in the performance of its obligations under the Call-Off Contract on the Buyer 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 Buyer 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 Buyer 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 Buyer for any loss arising directly from a breach of this obligation (including any diminution of monies received by the Buyer under any insurance policy).

2.7.2 If during the Call-Off Contract Term 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 Buyer 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 Buyer’s cost and the Supplier will (at no additional cost to the Buyer) provide any help the Buyer 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 [i**nsert 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

* 1. The Buyer whose offices are [**insert Buyer’s official address**] (‘Beneficiary’) **Whereas:**
		1. 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.
		2. 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.

|  |  |
| --- | --- |
|  | **Meaning** |
| **Term** |  |
| **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 judgement 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 judgement, 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 judgement.

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** | For each Party, IPRs:* 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

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. |
| **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 Supplier Terms. |
| **Charges** | The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under this Call-Off Contract. |
| **Collaboration Agreement** | An agreement, substantially in the form, set out at Schedule 3, between the Buyer and any combination of the Supplier and contractors, to ensure collaborative working in their delivery of the Buyer’s Services and to ensure that the Buyer receives end-to-end services across its IT estate. |
| **Commercially Sensitive** **Information** | Information, which the Buyer has been notified about by the Supplier in writing before the Start date with full details of why the Information is deemed to be commercially sensitive. |
| **Confidential Information** | Data, Personal Data and any information, which may include (but isn’t limited to) any:* 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** | Default is any:* 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

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. |
| **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 InformationCommissioner 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. |

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| --- | --- |
|  **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](https://www.gov.uk/guidance/check-employment-status-for-tax)  |
| **Expiry Date** | The expiry date of this Call-Off Contract in the Order Form. |
| **Financial Metrics** | The following financial and accounting measures:* Dun and Bradstreet score of 50
* Operating Profit Margin of 2%
* Net Worth of 0
* Quick Ratio of 0.7
 |
| **Force Majeure** | A force Majeure event means anything affecting either Party's performance of their obligations arising from any:* 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

The following do not constitute a Force Majeure event:* any industrial dispute about the Supplier, its staff, or failure in the Supplier’s (or a Subcontractor's) supply chain
* any event which is attributable to the wilful act, neglect or failure to take reasonable precautions by the Party seeking to rely on Force Majeure
* the event was foreseeable by the Party seeking to rely on Force

Majeure at the time this Call-Off Contract was entered into* any event which is attributable to the Party seeking to rely on Force Majeure and its failure to comply with its own business continuity and disaster recovery plans
 |
| **Former Supplier** | A supplier supplying services to the Buyer before the Start date that are the same as or substantially similar to the Services. This also includes any Subcontractor or the Supplier (or any subcontractor of the Subcontractor). |
| **Framework Agreement** | The clauses of framework agreement RM1557.14 together with the Framework Schedules. |
| **Fraud** | Any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Crown. |

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| **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. |

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|  **Information security management system** | The information security management system and process developed by the Supplier in accordance with clause 16.1. |
| **Inside IR35** | Contractual engagements which would be determined to be within the scope of the IR35 Intermediaries legislation if assessed using the ESI tool. |

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| **Insolvency event** | Can be:* a voluntary arrangement
* a winding-up petition
* the appointment of a receiver or administrator
* an unresolved statutory demand
* a Schedule A1 moratorium
* a Supplier Trigger Event
 |
| **Intellectual Property** **Rights or IPR** | Intellectual Property Rights are:(a) 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(b) 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* (c) all other rights having equivalent or similar effect in any country or jurisdiction
 |
| **Intermediary** | For the purposes of the IR35 rules an intermediary can be:* the supplier's own limited company
* a service or a personal service company
* a partnership

It does not apply if you work for a client through a Managed Service Company (MSC) or agency (for example, an employment agency). |
| **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. |

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| **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, judgement 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, judgement, 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. |

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| **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. |
| **Performance Indicators** | The performance information required by the Buyer from the Supplier set out in the Order Form. |
| **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** | 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:* 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:
	+ under the Bribery Act 2010
	+ under legislation creating offences concerning Fraud
	+ at common Law concerning Fraud
	+ committing or attempting or conspiring to commit Fraud
 |

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|  **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 high performance network which helps public sector organisations work together, reduce duplication and share resources. |
| **Regulatory body or bodies** | Government departments and other bodies which, whether under statute, codes of practice or otherwise, are entitled to investigate or influence the matters dealt with in this Call-Off Contract. |
| **Relevant person** | Any employee, agent, servant, or representative of the Buyer, any other public body or person employed by or on behalf of the Buyer, or any other public body. |
| **Relevant Transfer** | A transfer of employment to which the employment regulations applies. |
| **Replacement Services** | Any services which are the same as or substantially similar to any of the Services and which the Buyer receives in substitution for any of the services after the expiry or Ending or partial Ending of the Call-Off Contract, whether those services are provided by the Buyer or a third party. |
| **Replacement supplier** | Any third-party service provider of replacement services appointed by the Buyer (or where the Buyer is providing replacement Services for its own account, the Buyer). |
| **Security management plan** | The Supplier's security management plan developed by the Supplier in accordance with clause 16.1. |

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|  **Services** | The services ordered by the Buyer as set out in the Order Form. |
| **Service Data** | Data that is owned or managed by the Buyer and used for the G-Cloud Services, including backup data and Performance Indicators 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-controlsche ck-if-you-need-approval-to-spend-money-on-a-service](https://www.gov.uk/service-manual/agile-delivery/spend-controls-check-if-you-need-approval-to-spend-money-on-a-service)  |
| **Start date** | The Start date of this Call-Off Contract as set out in the Order Form. |
| **Subcontract** | Any contract or agreement or proposed agreement between the Supplier and a subcontractor in which the subcontractor agrees to provide to the Supplier the G-Cloud Services or any part thereof or facilities or goods and services necessary for the provision of the G-Cloud Services or any part thereof. |
| **Subcontractor** | Any third party engaged by the Supplier under a subcontract(permitted under the Framework Agreement and the Call-OffContract) 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. |

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| **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. |
| **Trigger Event** | The Supplier simultaneously fails to meet three or more Financial Metrics for a period of at least ten Working Days. |
| **Variation** | This has the meaning given to it in clause 32 (Variation process). |
| **Variation Impact Assessment** | An assessment of the impact of a variation request by the Buyer completed in good faith, including:* 1. details of the impact of the proposed variation on the Deliverables and the Supplier's ability to meet its other obligations under the Call-Off Contract;
	2. details of the cost of implementing the proposed variation;
	3. details of the ongoing costs required by the proposed variation when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
	4. a timetable for the implementation, together with any proposals for the testing of the variation; and

such other information as the Buyer may reasonably request in (or in response to) the variation request; |
| **Working Days** | Any day other than a Saturday, Sunday or public holiday in England and Wales. |
| **Year** | A contract year. |

### Intentionally Blank

## 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. The contact details of the Buyer’s Data Protection Officer are: DataProtectionOfficer@dft.gov.uk

1.2 The contact details of the Supplier’s Data Protection Officer are: dpo@kyndryl.com

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.

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| **Description** | **Details** |
| Identity of Controller and Processor for each Category of Personal Data | **The Buyer is Controller and the Supplier is Processor**The Parties acknowledge that in accordance with paragraphs 2 to paragraph 15 of Schedule 7 and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor of the following Personal Data:* contained in the key business systems VSS, D90, SOMWeb which are subject to provision of the services by the Supplier to the Buyer.

This Call-Off Order is for the provision by the Supplier to the Buyer of a Mainframe Hosting and Disaster Recovery Service.The services provided are described in the SOW. |
| Duration of the Processing | Under this Call-off Order the period for the Duration is the Term of the Call-off Order i.e. 16th August 2025 to 15th August 2026. |
| Nature and purposes of the Processing | This contract is for the Supplier to provide a Mainframe cloud service which includes the storage of data (including backups), system software and middleware, together with support and maintenance as described in the SOW. The Supplier hosts and manages the Mainframe service. The Buyer uses and manages the Applications and Databases.In certain circumstances the Buyer may require the Supplier to perform functions on the Buyers behalf. The DVLA approves access, which Supplier then grants to the relevant Supplier engineers, for the permitted length of time, during which time, the Supplier engineers could have access to the Personal Data on the system. However, they are not contractually permitted to access the information unless necessary to provide the support function.The nature of Processing consists of the following Supplier’s Processing Activities based on the Buyer's instructions:* Backup - Back-up, archiving, or disaster recovery (Execution only)
* Buyer Support - Help desk or other technical support
* Hosting - Storage or other computing resources
* Security (e.g., IAM, endpoint, network, app & workload, data protection, analytics, automation or orchestration)
* Services – Delivery of professional services
 |
| Type of Personal Data | The Buyer´s Personal Data hosted in the Supplier´s environment (in the VSS, D90 and SOMWeb systems) include, but not be limited to, the following details as an example:* Name
* Date of Birth
* Address
* Nationality
* Gender
* Vehicle Registration Mark (VRM)
* Bank/Payment Details
* Medical Information
* Driving Licence Endorsement Details
* Driving Licence Type
* Vocational Licence Holder ‘Conduct’
* Capabilities and Qualifications of the Individual
* Education and Professional Certifications
* Profession and Employment Information Characteristics of the Individual
* Economic and Financial
* Nationality and Citizenship Habits and Activities of the Individual
* Behaviour Identity of the Individual
* Government Identities
* Identification Number
* Online Access and Authentication Credentials
* Online Identifier
* Other unique identifiers of an individual
* Person Name
* Technology Identifiers
* Telephony Location of the Individual
* Physical Location of the Individual
 |
| Categories of Data Subject | * DVLA employees involved in administration and operation (including temporary or casual workers, volunteers, assignees, trainees, retirees, pre-hires and applicants)
* Driving Licence Holders
* Driving Licence Applicants
* Vehicle Details and Keepers
* Vocational Drivers
* Fleet/Business Vehicle Keepers
* Images stored from DVLA used ‘Vignette/CASP’ systems

(These images will capture *any* information that is sent to DVLA or captured by DVLA as part of a case, complaint or enquiry)*.* |
| International transfers and legal gateway | Supplier provides a Mainframe cloud service and Disaster Recovery Service from UK & EU and relies on adequacy decision as the legal gateway to export the data from UK to EU. |
| Plan for return and destruction of the data once the Processing is complete | Sale of Marks and Drivers transaction Financial details are stored for 9 months then obfuscated (replaced by asterisks).If a Driver is deceased the record will be ‘skeletonised’, whereby the information held is reduced to the minimal viable needed to check for that record.The Supplier shall return Buyer Personal Data that is accessible to Supplier within a reasonable period upon the expiration or termination of the Services and hereby certifies that all remaining Buyer Personal Data are deleted at the end of the Services, or as applicable, plans to return or destroy all existing copies of the data may be determined during the development of the exit strategy and will depend on what technology platform DVLA are using at that time. |
| General Verification and Maintenance | This Annex 1 lists information about the Categories of Data Subjects, the Types of Buyer Personal Data, including Special Categories of Personal Data, that are Processed within the Services.Supplier will Process the Types of Buyer Personal Data, including Special Categories of Personal Data of the identified Categories of Data Subjects listed above in accordance with the Framework Agreement.Given the nature of the Services, Buyer acknowledges that Supplier is not able to verify or maintain the above lists, therefore, Buyer will notify Supplier of any required changes in accordance with the agreed notification procedures in the Framework Agreement. If changes to the above lists require changes of the agreed Processing, Buyer shall provide Additional Instructions to Supplier as set out in this Annex 1. |
| Technical and Organizational Measures | The technical and organizational measures (TOMs) applicable to the Services are available at: <https://www.kyndryl.com/terms/dsp>. These TOMs as set out above are applicable to all Content, including Buyer Personal Data. A copy of the document is attached for information purposes only. In case of conflict the most up-to-date document in the link will prevail. |
| Supplier Privacy and Contact Notifications | The Chief Privacy Office can be contacted at ChiefPrivacyOffice@kyndryl.com. |

**Subprocessors**

Supplier may use the following Subprocessor(s) in the Processing of Buyer Personal Data:

**Supplier Companies established in an adequate country:**

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| --- | --- | --- |
| **Supplier Companies and Locations** | **Processing Activities** | **Types of Personal Data and Special Categories of Personal Data** |
| Kyndryl Bulgaria EOOD (Bulgaria) | Services – Delivery of professional services | Other unique identifiers of an individual, Person Name, Telephony |
| Kyndryl Hungary Kft. (Hungary) | Security (e.g., IAM, endpoint, network, app & workload, data protection, analytics, automation or orchestration), Services – Delivery of professional services | Other unique identifiers of an individual, Person Name, Telephony |
| Kyndryl Services Slovensko, spol. s r.o.(Slovakia) | Services – Delivery of professional services | Other unique identifiers of an individual, Person Name, Telephony |

**Third-Party Subprocessors established in an adequate country:**

|  |  |  |
| --- | --- | --- |
| **Third-Party Subprocessors and Locations** | **Processing Activities** | **Types of Personal Data and Special Categories of Personal Data**  |
| IBM UNITED KINGDOM LIMITED(United Kingdom) | Operations - Provision, maintenance, or management (including security management) of applications, networks, systems, or infrastructure |  |
| POMEROY IT SOLUTIONS UK LIMITED(United Kingdom) | Backup - Back-up, archiving, or disaster recovery (Execution only), Communication - Email, SMS, or other communication service, Customer Support - Help desk or other technical support,Monitoring - Applications, networks, systems, or infrastructure logging or monitoring, Operations - Provision, maintenance, or management (including security management) of applications, networks, systems, or infrastructure |  |
| SERVICE EXPRESS EUROPE LIMITED (United Kingdom) | Operations - Provision, maintenance, or management (including security management) of applications, networks, systems, or infrastructure |  |

## Annex 2 - Joint Controller Agreement – Not Used

## Schedule 8 (Corporate Resolution Planning)

### 1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 6 (Glossary and interpretations):

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| **"Accounting Reference Date"** | means in each year the date to which the Supplier prepares its annual audited financial statements; |
| **“Annual Revenue”** | means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; andwhere the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date; |
| **“Appropriate Authority” or “Appropriate Authorities”** | means the Buyer and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team; |
| **“Associates”** | means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles; |
| **"Cabinet Office Markets and Suppliers Team"** | means the UK Government’s team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function; |
| **“Class 1 Transaction”** | has the meaning set out in the listing rules issued by the UK Listing Authority; |
| **“Control”** | the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly; |
| **“Corporate Change Event”** | means:* + - 1. any change of Control of the Supplier or a Parent Undertaking of the Supplier;
			2. any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Buyer, could have a material adverse effect on the Services;
			3. any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Buyer, could have a material adverse effect on the Services;
			4. a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;
			5. an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
			6. payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12 month period;
			7. an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;
			8. any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;
			9. the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
			10. any process or events with an effect analogous to those in paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;
 |
| **"Corporate Change Event Grace Period"** | means a grace period agreed to by the Appropriate Authority for providing CRP Information and/or updates to Business Continuity Plan after a Corporate Change Event; |
| **"Corporate Resolvability Assessment (Structural Review)"** | means part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraph 3 and Annex 2 of this Schedule; |
| **“Critical National Infrastructure” or “CNI”** | means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/orsignificant impact on the national security, national defence, or the functioning of the UK; |
| **“Critical Service Contract”** | means the overall status of the Services provided under the Call-Off Contract as determined by the Buyer and specified in Paragraph 2 of this Schedule; |
| **“CRP Information”** | means the corporate resolution planning information, together, the:(a) Exposure Information (Contracts List);(b) Corporate Resolvability Assessment (Structural Review); and(c) Financial Information and Commentary |
| **“Dependent Parent Undertaking”** | means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into the Call-Off Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of the Call-Off Contract; |
| **“FDE Group”****“Financial Distress Event”** | means the [Supplier, Subcontractors, [the Guarantor]the credit rating of an FDE Group entity dropping below the applicable Financial Metric;an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;an FDE Group entity committing a material breach of covenant to its lenders;a Subcontractor notifying CCS or the Buyer that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;any of the following:commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m; non-payment by an FDE Group entity of any financial indebtedness;any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; orthe external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity;in each case which the Buyer reasonably believes (or would be likely to reasonably believe) could directly impact on the continued performance and delivery of the Services in accordance with the Call-Off Contract; andany two of the Financial Metrics for the Supplier not being met at the same time. |
| **“Parent Undertaking”** | has the meaning set out in section 1162 of the Companies Act 2006; |
| **“Public Sector Dependent Supplier”** | means a supplier where that supplier, or that supplier’s group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business; |
| **“Strategic Supplier”** | means those suppliers to government listed athttps://www.gov.uk/government/publications/strategic-suppliers; |
| **“Subsidiary Undertaking”** |  has the meaning set out in section 1162 of the Companies Act 2006; |
| **“Supplier Group”** | means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;  |
| **“UK Public Sector Business”** | means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations; and |
| **“UK Public Sector / CNI Contract Information”** | means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 3 to 5 and Annex 1; |

### 2. Service Status and Supplier Status

2.1 This Call-Off Contract [insert ‘is’ or ‘is not’] a Critical Service Contract.

***[Guidance: A Critical Service Contract is a service contract which the Buyer has categorised as a Gold contract using the Cabinet Office Contract Tiering Tool available on the Knowledge Hub or which the Buyer, in consultation with the Cabinet Office Markets and Suppliers Team if appropriate, otherwise considers should be classed as a Critical Service Contract.]***

2.2 The Supplier shall notify the Buyer and the Cabinet Office Markets and Suppliers Team in writing within 5 Working Days of the Start Date and throughout the Call-Off Contract Term within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier. The contact email address for the Markets and Suppliers Team is resolution.planning@cabinetoffice.gov.uk.

2.3 The Buyer and the Supplier recognise that, where specified in the Framework Agreement, CCS shall have the right to enforce the Buyer's rights under this Schedule.

### 3. Provision of Corporate Resolution Planning Information

3.1 Paragraphs 3 to 5 shall apply if the Call-Off Contract has been specified as a Critical Service Contract under Paragraph 2.1 or the Supplier is or becomes a Public Sector Dependent Supplier.

3.2 Subject to Paragraphs 3.6, 3.10 and 3.11:

3.2.1 where the Call-Off Contract is a Critical Service Contract, the Supplier shall provide the Appropriate Authority or Appropriate Authorities with the CRP Information within 60 days of the Start Date; and

3.2.2 except where it has already been provided, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Appropriate Authority or Appropriate Authorities with the CRP Information within 60 days of the date of the Appropriate Authority’s or Appropriate Authorities’ request.

3.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 3.2, 3.8 and 3.9:

3.3.1 is full, comprehensive, accurate and up to date;

3.3.2 is split into three parts:

 (a) Exposure Information (Contracts List);

 (b) Corporate Resolvability Assessment (Structural Review);

 (c) Financial Information and Commentary

and is structured and presented in accordance with the requirements and explanatory notes set out in the latest published version of the Resolution Planning Guidance Note published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-sourcing-and-consultancy-playbooks> and contains the level of detail required (adapted as necessary to the Supplier’s circumstances);

3.3.3 incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Appropriate Authority or Appropriate Authorities to understand and consider the information for approval;

3.3.4 provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and

3.3.5 complies with the requirements set out at Annex 1 (Exposure Information (Contracts List)), Annex 2 (Corporate Resolvability Assessment (Structural Review)) and Annex 3 (Financial Information and Commentary) respectively.

3.4 Following receipt by the Appropriate Authority or Appropriate Authorities of the CRP Information pursuant to Paragraphs 3.2, 3.8 and 3.9, the Buyer shall procure that the Appropriate Authority or Appropriate Authorities shall discuss in good faith the contents of the CRP Information with the Supplier and no later than 60 days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that the Appropriate Authority or Appropriate Authorities approve the CRP Information or that the Appropriate Authority or Appropriate Authorities reject the CRP Information.

3.5 If the Appropriate Authority or Appropriate Authorities reject the CRP Information:

3.5.1 the Buyer shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and

3.5.2 the Supplier shall revise the CRP Information, taking reasonable account of the Appropriate Authority’s or Appropriate Authorities’ comments, and shall re-submit the CRP Information to the Appropriate Authority or Appropriate Authorities for approval within 30 days of the date of the Appropriate Authority’s or Appropriate Authorities’ rejection. The provisions of paragraph 3.3 to 3.5 shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution under clause 32 of the Framework Agreement (Managing disputes).

3.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a central government body or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that central government body and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid (which has the meaning in paragraph 3.7 below) on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information under Paragraph 3.2 if it provides a copy of the Valid Assurance to the Appropriate Authority or Appropriate Authorities on or before the date on which the CRP Information would otherwise have been required.

3.7 An Assurance shall be deemed Valid for the purposes of Paragraph 3.6 if:

3.7.1 the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than 12 months has elapsed since it was issued and no more than 18 months has elapsed since the Accounting Reference Date on which the CRP Information was based); and

3.7.2 no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if the Call-Off Contract had then been in force) have occurred since the date of issue of the Assurance.

3.8 If the Call-Off Contract is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 3.8.3 of its initial CRP Information) to the Appropriate Authority or Appropriate Authorities:

3.8.1 within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 3.11) unless the Supplier is relieved of the consequences of the Financial Distress Event as a result of credit ratings being revised upwards;

3.8.2 within 30 days of a Corporate Change Event unless

(a) the Supplier requests and the Appropriate Authority (acting reasonably) agrees to a Corporate Change Event Grace Period, in the event of which the time period for the Supplier to comply with this Paragraph shall be extended as determined by the Appropriate Authority (acting reasonably) but shall in any case be no longer than six months after the Corporate Change Event. During a Corporate Change Event Grace Period the Supplier shall regularly and fully engage with the Appropriate Authority to enable it to understand the nature of the Corporate Change Event and the Appropriate Authority shall reserve the right to terminate a Corporate Change Event Grace Period at any time if the Supplier fails to comply with this Paragraph; or

(b) not required pursuant to Paragraph 3.10;

3.8.3 within 30 days of the date that:

(a) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 3.10; or

(b) none of the credit rating agencies specified at Paragraph 3.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and

3.8.4 in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Appropriate Authority (whichever is the earlier), unless:

(a) updated CRP Information has been provided under any of Paragraphs 3.8.1 3.8.2 or 3.8.3 since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 3.8.4; or

(b) not required pursuant to Paragraph 3.10.

3.9 Where the Supplier is a Public Sector Dependent Supplier and the Call-Off Contract is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 3.8.1 to 3.8.4, the Supplier shall provide at the request of the Appropriate Authority or Appropriate Authorities and within the applicable timescales for each event as set out in Paragraph 3.8 (or such longer timescales as may be notified to the Supplier by the Buyer), the CRP Information to the Appropriate Authority or Appropriate Authorities.

3.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:

3.10.1 Aa3 or better from Moody’s;

3.10.2 AA- or better from Standard and Poors;

3.10.3 AA- or better from Fitch;

the Supplier will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the Financial Distress Event due to credit ratings being revised upwards) or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 3.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with paragraph 3.8.

3.11 Subject to Paragraph 5, where the Supplier demonstrates to the reasonable satisfaction of the Appropriate Authority or Appropriate Authorities that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Appropriate Authority or Appropriate Authorities, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Appropriate Authority or Appropriate Authorities to the extent required under Paragraph 3.8.

### 4. Termination Rights

4.1 The Buyer shall be entitled to terminate the Call-Off Contract if the Supplier is required to provide CRP Information under Paragraph 3 and either:

4.1.1 the Supplier fails to provide the CRP Information within 4 months of the Start Date if this is a Critical Service Contract or otherwise within 4 months of the Appropriate Authority’s or Appropriate Authorities’ request; or

4.1.2 the Supplier fails to obtain an Assurance from the Appropriate Authority or Appropriate Authorities within 4 months of the date that it was first required to provide the CRP Information under the Call-Off Contract, which shall be deemed to be an event to which Clause 18.4 applies.

### 5. Confidentiality and usage of CRP Information

5.1 The Buyer agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.

5.2 Where the Appropriate Authority is the Cabinet Office Markets and Suppliers Team, at the Supplier’s request, the Buyer shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on the Buyer under paragraph 5.1 and incorporated Framework Agreement clause 34.

5.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Appropriate Authority or Appropriate Authorities pursuant to Paragraph 3 subject, where necessary, to the Appropriate Authority or Appropriate Authorities entering into an appropriate confidentiality agreement in the form required by the third party.

5.4 Where the Supplier is unable to procure consent pursuant to Paragraph 5.3, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:

5.4.1 redacting only those parts of the information which are subject to such obligations of confidentiality;

5.4.2 providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:

(a) summarising the information;

(b) grouping the information;

(c) anonymising the information; and

(d) presenting the information in general terms

5.5 The Supplier shall provide the Appropriate Authority or Appropriate Authorities with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

## ANNEX 1: EXPOSURE: CRITICAL CONTRACTS LIST

1 The Supplier shall:

1.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:

(a) are with any UK public sector bodies including: central government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local buyers, health bodies, police fire and rescue, education bodies and the devolved administrations;

(b) are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in Paragraph 1.1(a) of this Annex 1 and where the member of the Supplier Group is acting as a key sub-contractor under the contract with the end recipient; or

(c) involve or could reasonably be considered to involve CNI;

1.2 provide the Appropriate Authority with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link

## ANNEX 2: CORPORATE RESOLVABILITY ASSESSMENT (STRUCTURAL REVIEW)

1. The Supplier shall:

1.1 provide sufficient information to allow the Appropriate Authority to understand the implications on the Supplier Group’s UK Public Sector Business and CNI agreements listed pursuant to Annex 1 if the Supplier or another member of the Supplier Group is subject to an Insolvency Event;

1.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and

1.3 provide full details of the importance of each member of the Supplier Group to the Supplier Group’s UK Public Sector Business and CNI agreements listed pursuant to Annex 1 and the dependencies between each.

## ANNEX 3: Financial information AND COMMENTARY

1 The Supplier shall:

1.1 provide sufficient financial information for the Supplier Group level, contracting operating entities level, and shared services entities’ level to allow the Appropriate Authority to understand the current financial interconnectedness of the Supplier Group and the current performance of the Supplier as a standalone entity; and

1.2 ensure that the information is presented in a simple, effective and easily understood manner.

2 For the avoidance of doubt the financial information to be provided pursuant to Paragraph 1 of this Annex 3 should be based on the most recent audited accounts for the relevant entities (or interim accounts where available) updated for any material changes since the Accounting Reference Date provided that such accounts are available in a reasonable timeframe to allow the Supplier to comply with its obligations under this Schedule. If such accounts are not available in that timeframe, to the extent permitted by Law financial information should be based on unpublished unaudited accounts or management accounts (disclosure of which to the Appropriate Authority remains protected by confidentiality).

## Schedule 9 - Variation Form

This form is to be used in order to change a Call-Off Contract in accordance with Clause 32 (Variation process)

|  |
| --- |
| **Contract Details**  |
| This variation is between: | **[insert** name of Buyer] **(“the Buyer")**And **[insert** name of Supplier**]** (**"the Supplier"**) |
| Contract name: | **[insert** name of contract to be changed] **(“the Contract”)** |
| Contract reference number: | **[insert** contract reference number] |
| **Details of Proposed Variation** |
| Variation initiated by: | **[delete** as applicable: Buyer/Supplier] |
| Variation number: | **[insert** variation number] |
| Date variation is raised: | **[insert** date] |
| Proposed variation |  |
| Reason for the variation: | **[insert** reason] |
| A Variation Impact Assessment shall be provided within: | **[insert** number] days |
| **Impact of Variation** |
| Likely impact of the proposed variation: | **[Supplier to insert** assessment of impact]  |
| **Outcome of Variation** |
| Contract variation: | This Contract detailed above is varied as follows:* **[Buyer to insert** original Clauses or Paragraphs to be varied and the changed clause]
 |
| Financial variation: | Original Contract Value: | £ **[insert** amount] |
| Additional cost due to variation: | £ **[insert** amount] |
| New Contract value: | £ **[insert** amount] |

1 This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by Buyer

2 Words and expressions in this Variation shall have the meanings given to them in the Contract.

3 The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Buyer

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name (in Capitals) |  |
| Address |  |
|  |  |

Signed by an authorised signatory to sign for and on behalf of the Supplier

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name (in Capitals) |  |
| Address |  |