

REDACTED

23rd January 2023

Call-Off Contract reference: Project_26267 Call-Off Contract title: Service Management Community Training License

Hi REDACTED

I am writing to advise you formally the DWP wish to exercise the option to extend our current Call Off Contract for Percipio by 12 months from 24-Jan-24 to 23-Jan-25 as per the Terms set out under the Framework Agreement.

We would look to maintain all the current arrangements in place in terms of the support, number of licenses, costs and the additional the 300 ITIL Percipio Peoplecert ITIL: Foundation Training & Certificate Bundle

I would appreciate if you could confirm:

- This is acceptable to Skillsoft and
- The costs for the extension

This is an updated request which supersedes the original issued 3rd October 2023, and is subject to the following wording which has been agreed by both parties

Skillsoft commits to remediating by end of June 2024 all the current WCAG 2.1AA compliance issues noted in the 2022 Percipio LP WCAG 2.1 VPAT and captured in the remediation plan as at the date of contract sign.

Skillsoft shall endeavour to ensure that all new material is accessibility conformant before publishing, and should any individual accessibility issues be subsequently identified through testing or via the user community these will be committed to a mutually agreed upon remediation plan and tracked to resolution.

Skillsoft acknowledges that the new standard for accessibility is WCAG2.2 A and AA and Skillsoft will be auditing to this standard as part of its ongoing accessibility program, with the objective of providing a Percipio Learning Platform WCAG 2.2 A and AA conformance report (VPAT) by October 2024.

Hope this is satisfactory.

Regards

REDACTED(ofo DWP)
Service Management Practice (Capability Lead)
DWP Digital
Department for Work and Pensions

OBO Skillsoft

G-Cloud 13 Call-Off Contract

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

G-Cloud 13 Call-Off Contract

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Part A: Order Form

Platform service ID number	624944213956241
Call-Off Contract reference	Project_26267_Year 2

Call-Off Contract title	Service Management Community Training Licenses.
Call-Off Contract description	<p>Licenses to access computer software to allow DWP staff to do the appropriate training.</p> <p>This Call-Off Contract reflects the Extension Period of 12 months contemplated by the Call-Off Contract reference Project_25502 effective 24th January 2023, which Extension Period the Buyer has opted to put into effect.</p>
Start date	24 th January 2024
Expiry date	23 rd January 2025
Call-Off Contract value	£177,336.00 (Exc. VAT).
Purchase order number	

This Order Form is issued under the G-Cloud 13 Framework Agreement (RM1557.13).

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.

From the Buyer	Department for Work and Pensions Quarry House, Quarry Hill Leeds West Yorkshire LS2 7UA
To the Supplier	Skillsoft UK Limited 1 Bartholomew Lane London, England, EC2N 2AXUnited Kingdom Company number: 02051729

Together the 'Parties'

For the Buyer:

Title: Learning Lead, Service Management Practice Support Team

Name: REDACTED

Email: REDACTED

For the Supplier:

Title: Account Executive, UKI Customer

Growth

Name: REDACTED

Email: REDACTED

Call-Off Contract term

Start date	This Call-Off Contract Starts on 24th January 2024 and is valid for 12 months (1 year).
Ending (termination)	<p>The notice period for the Supplier needed for Ending the Call-Off Contract is at least 30 Working Days from the date of written notice for undisputed sums (as per clause 18.6).</p> <p>The notice period for the Buyer is 30 days from the date of written notice for Ending without cause (as per clause 18.1).</p>

Extension Period	<p>None</p> <p>Extensions which extend the Term beyond 36 months are only permitted if the Supplier complies with the additional exit plan requirements at clauses 21.3 to 21.8.</p> <p>If a buyer is a central government department and the contract Term is intended to exceed 24 months, then under the Spend Controls process, prior approval must be obtained from the Government Digital Service (GDS). Further guidance:</p> <p>https://www.gov.uk/service-manual/agile-delivery/spend-controls-check-if-you-need-approval-to-spend-money-on-a-service</p>
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Buyer contractual details

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

G-Cloud Lot	<p>This Call-Off Contract is for the provision of Services Under:</p> <ul style="list-style-type: none"> ● Lot 2: Cloud software
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<p>G-Cloud services required</p>	<p>The Services to be provided by the Supplier under the above Lot are listed in Framework Section 2 and outlined below:</p> <p>Access to the 'Percipio Skillsoft Expert 2.0' product package as described in Supplier's Service Definition document found at:</p> <p>https://www.applytosupply.digitalmarketplace.service.gov.uk/g-cloud/services/624944213956241 for an Authorised Audience of 1200 staff of the Buyer.</p> <p>For the avoidance of doubt, Percipio Skillsoft Expert 2.0 includes learning assets on digital transformation subject matter previously included in the separate Digital Transformation collection.</p> <p>Additionally, due to removal of certain content on ITIL® from its Percipio Skillsoft Expert and Percipio Skillsoft Expert 2.0 content collections, access shall also be given to 'Percipio PeopleCert ITIL® Foundation Training & Certificate Bundle' for an Authorized Audience of 300 staff of the Buyer as was previously given under Call-Off Contract reference Project_24601 between the Parties.</p>
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'Percipio PeopleCert ITIL® Foundation Training & Certificate Bundle' is a bundle of ITILv4 content, in all commercially available localizations, and vouchers that allow the Buyer's users to take the ITILv4 Foundations certification exam. After issuance of the voucher, in the event that the Buyer or its users encounter an issue redeeming the voucher, the Buyer or user must contact PeopleCert (i) via email at customerservice@peoplecert.com, (ii) via chat at peoplecert.org, or (iii) via telephone at 669-231-7060.

Background on the Buyer's business need and features of the above G-Cloud Services which the Buyer believes will help it meet that need are given below:

Business Need/Requirement

The business need is to provide 1200 people access to an online learning portal, 24/7 that offers 50,000+ pieces of content in hundreds of curated learning paths which will support the learning of the 1200 people in Service Management and provide:

- **Personalized user interface:** Allow learners to create playlists, receive assignments, and get custom recommendations.
- **Micro-learning videos:** Provide quick, targeted learning focussing on specific tasks delivered in real-time.
- **Enhanced search:** Makes discovery easy by using the same elastic search capabilities as Facebook, Netflix, and eBay.
- **Mobile-friendly:** Enables learners to watch, read, and listen anytime, anywhere.
- **Visual data:** Makes it easy for managers to spot trends and monitor progress.
- **Impact reporting:** Links learning to business objectives, demonstrates ROI and business impact.
- **Assignments:** Allow managers to create flexible learning paths, assign them to users, and monitor progress.
- **VFM:** licences for Percipio Skillsoft Expert 2.0 are approx. £148 pp – providing an extremely cheap option to a wide range of IT training interventions.
- **Licences for Percipio PeopleCert ITIL® Foundation:** Training & Certificate Bundle are provided by Supplier without additional charge.

Continuity: Skillsoft Percipio has been available to Practice members for 12 months and has been extremely well received. This is also supported by the comprehensive MI we analyse monthly. We have been unable to find a comparative product, with such a Service Management focus on the market.

Additional Services	None
Location	The Services will be delivered online via the world-wide web. and shall consequently be available for access and use at each of the Buyer's offices and remote working locations.
Quality Standards	<p>The quality standards required for this Call-Off Contract are as per Supplier's published Service Definition document found at https://assets.applytosupply.digitalmarketplace.service.gov.uk/g-cloud-13/documents/711758/624944213956241-service-definition-document-2022-05-17-1647.pdf and Terms and Conditions found at https://assets.applytosupply.digitalmarketplace.service.gov.uk/g-cloud-13/documents/711758/624944213956241-terms-and-conditions-2022-05-17-1214.pdf</p> <p>Specific features of the Services as described in such Service Definition document include:</p> <ul style="list-style-type: none"> • Personalised user interface: Allow learners to create playlists, receive assignments, and get custom recommendations. • Micro-learning videos: Provide quick, targeted learning focusing on specific tasks delivered in real-time. • Enhanced search: Makes discovery easy by using the same elastic search capabilities as Facebook, Netflix, and eBay. • Mobile-friendly: Enables learners to watch, read, and listen anytime, anywhere. • Visual data: Makes it easy for managers to spot trends and monitor progress. • Impact reporting: Links learning to business objectives, demonstrates ROI and business impact. • Assignments: Allow managers to create flexible learning paths, assign them to users, and monitor progress.
Technical Standards:	The technical standards used as a requirement for this Call-Off Contract have been considered and approved by the Digital Design Authority.
Service level agreement:	<p>The service level and availability criteria required for this Call Off can be found in Supplier's published Service Definition document found here:</p> <p>https://assets.applytosupply.digitalmarketplace.service.gov.uk/g-cloud-13/documents/711758/624944213956241-service-definition-document-2022-05-17-1647.pdf</p>
Onboarding	<p>The onboarding plan for this Call-Off Contract is as follows.</p> <p>The existing Percipio site found at the following url will be used: https://dwpdigital.percipio.com.</p>

Offboarding	<p>The offboarding plan for this Call-Off Contract is, as described in Supplier's published Service Definition document found here: https://assets.applytosupply.digitalmarketplace.service.gov.uk/g-cloud-13/documents/711758/624944213956241-service-definition-document-2022-05-17-1647.pdf, which specifies that, upon Buyer's request within 30 days of the end of the Call-Off Contract, Supplier will provide a copy in an industry-standard format of a copy of the Buyer's data (including data of usage of the Supplier products by individuals) held on the Percipio platform.</p>
Collaboration agreement	None
Limit on Parties' liability	<p>The annual total liability of either Party for all Property Defaults will not exceed 125% of the contract value.</p> <p>The annual total liability for Buyer Data Defaults will not exceed 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term.</p> <p>The annual total liability for all other Defaults will not exceed the greater of or 125% of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term.</p>
Insurance	<p>The Supplier insurance(s) required will be:</p> <ul style="list-style-type: none"> • a minimum insurance period of 6 years following the expiration or Ending of this Call-Off Contract. • professional indemnity insurance cover to be held by the Supplier and by any agent, Subcontractor or consultant involved in the supply of the G-Cloud Services. This professional indemnity insurance cover will have a minimum limit of indemnity of £1,000,000 for each individual claim or any higher limit the Buyer requires (and as required by Law). • employers' liability insurance with a minimum limit of £5,000,000 or any higher minimum limit required by Law.
Buyer's responsibilities	Not Applicable.

Buyer's equipment	There is no specific Buyer's equipment to be used with this Call- Off Contract due to it being the provision of a Software as a Service solution. For the avoidance of doubt, Buyer's staff will require laptop, desktop and/or mobile computers meeting the technical requirements for hardware and software referenced in the Supplier's Service Definition Document in order to access Percipio and learning assets available therefrom, provision of which computers is not the responsibility of Supplier.
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Supplier's information

Subcontractors or partners	None
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Call-Off Contract charges and payment

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

Payment method	The payment method for this Call-Off Contract is BACS .
Payment profile	The payment profile for this Call-Off Contract is annually in advance .
Invoice details	The Supplier will issue electronic invoices annually in advance. The Buyer will pay the Supplier within 30 days of receipt of a valid invoice.
Who and where to send invoices to	Invoices will be sent to REDACTED
Invoice information required	All invoices must include purchase order number.
Invoice frequency	Invoice will be sent to the Buyer annually in advance.

Call-Off Contract value	<p>The value of this Call-Off Contract is £177,336.00 per annum. (exc. VAT)</p> <p>Therefore, the total value of this Call-Off Contract will be £177,336.00.</p>
Call-Off Contract charges	<p>The breakdown of the Charges is itemised in Schedule 2 of this Call-Off Contract.</p>

Additional Buyer terms

Performance of the Service	<p>This Call-Off Contract will include the following additional undertakings by Supplier:</p> <p>Skillsoft commits to remediating by end of June 2024 all the current WCAG 2.1AA compliance issues noted in the 2022 Percipio LP WCAG 2.1 VPAT and captured in the remediation plan as at the date of contract sign.</p> <p>Skillsoft shall endeavour to ensure that all new material is accessibility conformant before publishing, and should any individual accessibility issues be subsequently identified through testing or via the user community these will be committed to a mutually agreed upon remediation plan and tracked to resolution.</p> <p>Skillsoft acknowledges that the new standard for accessibility is WCAG2.2 A and AA and Skillsoft will be auditing to this standard as part of its ongoing accessibility program, with the objective of providing a Percipio Learning Platform WCAG 2.2 A and AA conformance report (VPAT) by October 2024.</p>
Guarantee	Not applicable
Warranties, representations	<p>In addition to the incorporated Framework Agreement clause 2.3, the Parties acknowledge the warranty specific to Skillsoft Products set forth in Supplier's Terms and Conditions document found at</p> <p>https://assets.applytosupply.digitalmarketplace.service.gov.uk/g-cloud-13/documents/711758/624944213956241-terms-and-conditions-2022-05-17-1214.pdf</p>
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	Not applicable
Personal Data and Data Subjects	<p>Personal Data and Data Subjects</p> <p>Confirm whether Annex 1 (and Annex 2, if applicable) of Schedule 7 is being used: Annex 1.</p> <p>“International Data Transfer Agreement” or “IDTA” means the contractual mechanism for the restricted transfer of Personal Data to third countries issued under Section 119A of the DPA 2018, as laid before the UK Parliament on 2 February 2022, (as amended or replaced from time to time) and set out in the Information Commissioner’s Office (“ICO”) website available at: https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/international-data-transfer-agreement-and-guidance</p> <p>Buyer (Controller) hereby gives its consent to the following, each of which constitutes a transfer of Personal Data to third countries:</p>

	<p>(i) Processing of Personal Data by the following affiliated company of Supplier, which will act as a Subprocessor -</p> <p>Skillsoft Canada Limited (CA) - activities include participation in the maintenance and operation of servers, participation in the set-up of web-sites and delivery of customer support services, all utilised for the performance of this Call-Off Contract.</p> <p>Location: 20 Knowledge Park Drive, New Brunswick E3C 2P5, Canada</p> <p>The Parties acknowledge that Canada is subject to an adequacy decision by the European Commission in accordance with GDPR Article 45 (3).</p> <p>(ii) Processing of Personal Data by the following affiliated company of Supplier, which may act as a Subprocessor –</p> <p>Skillsoft (US) LLC (US) - activities include participation in the maintenance and operation of servers and participation in the set-up of web-sites, all utilised for the performance of this Call- Off Contract.</p> <p>Location: 300 Innovative Way, Nashua, NH 03062, USA</p> <p>(iii) Processing of Personal Data by the following affiliated company of Supplier, which may act as a Subprocessor –</p> <p>Skillsoft Services Company LLC (US) - activities include participation in the maintenance and operation of servers and participation in the set-up of web-sites, all utilised for the performance of this Call-Off Contract.</p> <p>(iv) Processing of Personal Data by the following affiliated company of Supplier, which may act as a Subprocessor -</p> <p>Skillsoft Software Services India Private Limited (IN) - activities include participation in the maintenance and operation of servers and participation in the set-up of web- sites, all utilised for the performance of this Call-Off Contract.</p> <p>Location: #20, 2nd Floor, Uniworth Plaza, Sankey Road, Bangalore, 560 066, India</p> <p>(v) Processing of Personal Data by the following third party, which may act as a Subprocessor:</p> <p>Salesforce.com, Inc. (US) – activities include provision of Live Agent chat functionality used where “mentoring” is enabled and in delivery of customer support services, all utilised for the performance of this Call-Off Contract.</p> <p>Location: Salesforce Tower, 415 Mission Street, 3rd Floor, San Francisco, California 94105, U.S.A.</p> <p>(vi) Processing of Personal Data by the following third party, which may act as a Subprocessor:</p> <p>EdInvent, Inc. d/b/a Accredible (US) – a provider of digital certificates and badges upon completion of an online course by a user. Buyer opts to allow Accredible to produce badges for its users.</p>
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	<p>Location: 800 West El Camino Real, Suite 180, Mountain View, California 94040</p> <p>(vi) Processing of Personal Data by the following third party, which may act as a Subprocessor:</p> <p>Pendo (US) - Pendo provides in-app guidance in the form of tours and tutorials to end users. Pendo also provides feedback and solutions for improvement of Percipio products by analysing users' experience of Percipio products.</p> <p>Location - Wells Fargo Capitol Center, 150 Fayetteville St, Raleigh, NC 27601</p> <p>Execution of this Call-off contract includes execution of the IDTA appended as Exhibit 1 to Schedule 7 of this Call-Off Contract between (a) Buyer (as data exporter) and (b) Skillsoft (US) LLC, Skillsoft Services Company LLC and Skillsoft Software Services India Private Limited, each an affiliated company of Supplier and Subprocessor as detailed above as well as Supplier, (together as data importer) with respect to the processing of Personal Data. Supplier's signature of the IDTA will be deemed signature by and on behalf of the aforementioned affiliated companies of Supplier as well as by Supplier.</p>
Intellectual Property	<p>Note any Project Specific IPR that may arise and require assignment and otherwise note any other required amendments to standard IPR provisions: None.</p> <p>However, the Parties acknowledge that Supplier's Terms and Conditions document found at https://assets.applytosupply.digitalmarketplace.service.gov.uk/g-cloud-13/documents/711758/624944213956241-terms-and-conditions-2022-05-17-1214.pdf includes further detail regarding the license grants made hereunder and procedures in the event of an IPR Claim.</p>
Social Value	N/A

1. Formation of contract

- 1.1 By signing and returning this Order Form (Part A), the Supplier agrees to enter into a 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 clause 8.3 of the Framework Agreement.

2. Background to the agreement

- 2.1 The Supplier is a provider of G-Cloud Services and agreed to provide the Services under the terms of Framework Agreement number RM1557.13.

Signed	Supplier	Buyer
Name		
Title		Commercial Lead
Signature		
Date	^{1/24/2024} [Enter date]	29/01/2024



Customer Benefits

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

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

For the avoidance of doubt, the customer benefits record is to be completed by the Buyer.

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.
- 1.3 The Buyer can extend this Call-Off Contract, with written notice to the Supplier, by the period in the Order Form, provided that this is within the maximum permitted under the Framework Agreement of 1 period of up to 12 months.
- 1.4 The Parties must comply with the requirements under clauses 21.3 to 21.8 if the Buyer reserves the right in the Order Form to set the Term at more than 24 months.

2. Incorporation of terms

- 2.1 The following Framework Agreement clauses (including clauses and defined terms referenced by them) as modified under clause 2.2 are incorporated as separate Call-Off Contract obligations and apply between the Supplier and the Buyer:

- 2.3 (Warranties and representations)
- 4.1 to 4.6 (Liability)
- 4.10 to 4.11 (IR35)
- 10 (Force majeure)
- 5.3 (Continuing rights)
- 5.4 to 5.6 (Change of control)
- 5.7 (Fraud)
- 5.8 (Notice of fraud)
- 7 (Transparency and Audit)
- 8.3 (Order of precedence)
- 11 (Relationship)
- 14 (Entire agreement)
- 15 (Law and jurisdiction)
- 16 (Legislative change)
- 17 (Bribery and corruption)
- 18 (Freedom of Information Act)
- 19 (Promoting tax compliance)
- 20 (Official Secrets Act)
- 21 (Transfer and subcontracting)
- 23 (Complaints handling and resolution)
- 24 (Conflicts of interest and ethical walls)
- 25 (Publicity and branding)

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

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

- 2.2.1 a reference to the 'Framework Agreement' will be a reference to the 'Call-Off Contract'
- 2.2.2 a reference to 'CCS' or to 'CCS and/or the Buyer' will be a reference to 'the Buyer'
- 2.2.3 a reference to the 'Parties' and a 'Party' will be a reference to the Buyer and Supplier as Parties under this Call-Off Contract
- 2.3 The Parties acknowledge that they are required to complete the applicable Annexes contained in Schedule 7 (Processing Data) of the Framework Agreement for the purposes of this Call-Off Contract. The applicable Annexes being reproduced at Schedule 7 of this Call-Off Contract.
- 2.4 The Framework Agreement incorporated clauses will be referred to as incorporated Framework clause 'XX', where 'XX' is the Framework Agreement clause number.
- 2.5 When an Order Form is signed, the terms and conditions agreed in it will be incorporated into this Call-Off Contract.

3. Supply of services

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

4. Supplier staff

- 4.1 The Supplier Staff must:
 - 4.1.1 be appropriately experienced, qualified and trained to supply the Services
 - 4.1.2 apply all due skill, care and diligence in faithfully performing those duties
 - 4.1.3 obey all lawful instructions and reasonable directions of the Buyer and provide the Services to the reasonable satisfaction of the Buyer

- 4.1.4 respond to any enquiries about the Services as soon as reasonably possible
- 4.1.5 complete any necessary Supplier Staff vetting as specified by the Buyer
- 4.2 The Supplier must retain overall control of the Supplier Staff so that they are not considered to be employees, workers, agents or contractors of the Buyer.
- 4.3 The Supplier may substitute any Supplier Staff as long as they have the equivalent experience and qualifications to the substituted staff member.
- 4.4 The Buyer may conduct IR35 Assessments using the ESI tool to assess whether the Supplier's engagement under the Call-Off Contract is Inside or Outside IR35.
- 4.5 The Buyer may End this Call-Off Contract for Material Breach as per clause 18.5 hereunder if the Supplier is delivering the Services Inside IR35.
- 4.6 The Buyer may need the Supplier to complete an Indicative Test using the ESI tool before the Start date or at any time during the provision of Services to provide a preliminary view of whether the Services are being delivered Inside or Outside IR35. If the Supplier has completed the Indicative Test, it must download and provide a copy of the PDF with the 14digit ESI reference number from the summary outcome screen and promptly provide a copy to the Buyer.
- 4.7 If the Indicative Test indicates the delivery of the Services could potentially be Inside IR35, the Supplier must provide the Buyer with all relevant information needed to enable the Buyer to conduct its own IR35 Assessment.
- 4.8 If it is determined by the Buyer that the Supplier is Outside IR35, the Buyer will provide the ESI reference number and a copy of the PDF to the Supplier.

5. Due diligence

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

6. Business continuity and disaster recovery

- 6.1 The Supplier will have a clear business continuity and disaster recovery plan in their Service Descriptions.
- 6.2 The Supplier's business continuity and disaster recovery services are part of the Services and will be performed by the Supplier when required.

6.3 If requested by the Buyer prior to entering into this Call-Off Contract, the Supplier must ensure that its business continuity and disaster recovery plan is consistent with the Buyer's own plans.

7. Payment, VAT and Call-Off Contract charges

7.1 The Buyer must pay the Charges following clauses 7.2 to 7.11 for the Supplier's delivery of the Services.

7.2 The Buyer will pay the Supplier within the number of days specified in the Order Form on receipt of a valid invoice.

7.3 The Call-Off Contract Charges include all Charges for payment processing. All invoices submitted to the Buyer for the Services will be exclusive of any Management Charge.

7.4 If specified in the Order Form, the Supplier will accept payment for G-Cloud Services by the Government Procurement Card (GPC). The Supplier will be liable to pay any merchant fee levied for using the GPC and must not recover this charge from the Buyer.

7.5 The Supplier must ensure that each invoice contains a detailed breakdown of the G-Cloud Services supplied. The Buyer may request the Supplier provides further documentation to substantiate the invoice.

7.6 If the Supplier enters into a Subcontract it must ensure that a provision is included in each Subcontract which specifies that payment must be made to the Subcontractor within 30 days of receipt of a valid invoice.

7.7 All Charges payable by the Buyer to the Supplier will include VAT at the appropriate Rate.

7.8 The Supplier must add VAT to the Charges at the appropriate rate with visibility of the amount as a separate line item.

7.9 The Supplier will indemnify the Buyer on demand against any liability arising from the Supplier's failure to account for or to pay any VAT on payments made to the Supplier under this Call-Off Contract. The Supplier must pay all sums to the Buyer at least 5 Working Days before the date on which the tax or other liability is payable by the Buyer.

7.10 The Supplier must not suspend the supply of the G-Cloud Services unless the Supplier is entitled to End this Call-Off Contract under clause 18.6 for Buyer's failure to pay undisputed sums of money. Interest will be payable by the Buyer on the late payment of any undisputed sums of money properly invoiced under the Late Payment of Commercial Debts (Interest) Act 1998.

7.11 If there's an invoice dispute, the Buyer must pay the undisputed portion of the amount and return the invoice within 10 Working Days of the invoice date. The Buyer will provide a covering statement with proposed amendments and the reason for any non-payment. The Supplier must notify the Buyer within 10 Working Days of receipt of the returned invoice if it accepts the amendments. If it does then the Supplier must provide a replacement valid invoice with the response.

7.12 Due to the nature of G-Cloud Services it isn't possible in a static Order Form to exactly define the consumption of services over the duration of the Call-Off Contract. The Supplier agrees that the Buyer's volumes indicated in the Order Form are indicative only.

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

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

9. Insurance

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

9.2 The Supplier will ensure that:

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

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

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

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

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

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

9.4.1 a broker's verification of insurance

9.4.2 receipts for the insurance premium

9.4.3 evidence of payment of the latest premiums due

9.5 Insurance will not relieve the Supplier of any liabilities under the Framework Agreement or this Call-Off Contract and the Supplier will:

9.5.1 take all risk control measures using Good Industry Practice, including the investigation and reports of claims to insurers

9.5.2 promptly notify the insurers in writing of any relevant material fact under any Insurances

9.5.3 hold all insurance policies and require any broker arranging the insurance to hold any insurance slips and other evidence of insurance

9.6 The Supplier will not do or omit to do anything, which would destroy or impair the legal validity of the insurance.

9.7 The Supplier will notify CCS and the Buyer as soon as possible if any insurance policies have been, or are due to be, cancelled, suspended, Ended or not renewed.

9.8 The Supplier will be liable for the payment of any:

9.8.1 premiums, which it will pay promptly

9.8.2 excess or deductibles and will not be entitled to recover this from the Buyer

10. Confidentiality

10.1 The Supplier must during and after the Term keep the Buyer fully indemnified against all Losses, damages, costs or expenses and other liabilities (including legal fees) arising from any breach of the Supplier's obligations under incorporated Framework Agreement clause

34. The indemnity doesn't apply to the extent that the Supplier breach is due to a Buyer's instruction.

11. Intellectual Property Rights

11.1 Save for the licences expressly granted pursuant to Clauses 11.3 and 11.4, neither Party shall acquire any right, title or interest in or to the Intellectual Property Rights ("IPR"s) (whether pre-existing or created during the Call-Off Contract Term) of the other Party or its licensors unless stated otherwise in the Order Form.

11.2 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

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

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

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

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

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

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

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

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

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

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

11.6.2 Supplier's performance of the Services

11.6.3 use by the Buyer of the Services

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

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

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

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

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

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

11.8.2 other material provided by the Buyer necessary for the Services

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

12. Protection of information

12.1 The Supplier must:

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

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

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

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

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

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

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

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

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

13. Buyer data

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

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

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

- 13.4 The Supplier must ensure that any Supplier system that holds any Buyer Data is a secure system that complies with the Supplier's and Buyer's security policies and all Buyer requirements in the Order Form.
- 13.5 The Supplier will preserve the integrity of Buyer Data processed by the Supplier and prevent its corruption and loss.
- 13.6 The Supplier will ensure that any Supplier system which holds any protectively marked Buyer Data or other government data will comply with:
- 13.6.1 the principles in the Security Policy Framework: <https://www.gov.uk/government/publications/security-policy-framework> and the Government Security Classification policy: <https://www.gov.uk/government/publications/government-securityclassifications>
 - 13.6.2 guidance issued by the Centre for Protection of National Infrastructure on Risk Management: <https://www.cpni.gov.uk/content/adopt-risk-managementapproach> and Protection of Sensitive Information and Assets: <https://www.cpni.gov.uk/protection-sensitive-information-and-assets>
 - 13.6.3 the National Cyber Security Centre's (NCSC) information risk management guidance: <https://www.ncsc.gov.uk/collection/risk-management-collection>
 - 13.6.4 government best practice in the design and implementation of system components, including network principles, security design principles for digital services and the secure email blueprint: <https://www.gov.uk/government/publications/technologycode-of-practice/technology-code-of-practice>
 - 13.6.5 the security requirements of cloud services using the NCSC Cloud Security Principles and accompanying guidance: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles>
 - 13.6.6 Buyer requirements in respect of AI ethical standards.
- 13.7 The Buyer will specify any security requirements for this project in the Order Form.
- 13.8 If the Supplier suspects that the Buyer Data has or may become corrupted, lost, breached or significantly degraded in any way for any reason, then the Supplier will notify the Buyer immediately and will (at its own cost if corruption, loss, breach or degradation of the Buyer Data was caused by the action or omission of the Supplier) comply with any remedial action reasonably proposed by the Buyer.
- 13.9 The Supplier agrees to use the appropriate organisational, operational and technological processes to keep the Buyer Data safe from unauthorised use or access, loss, destruction, theft or disclosure.
- 13.10 The provisions of this clause 13 will apply during the term of this Call-Off Contract and for as long as the Supplier holds the Buyer's Data.

14. Standards and quality

- 14.1 The Supplier will comply with any standards in this Call-Off Contract, the Order Form and the Framework Agreement.
- 14.2 The Supplier will deliver the Services in a way that enables the Buyer to comply with its obligations under the Technology Code of Practice, which is at:
<https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>
- 14.3 If requested by the Buyer, the Supplier must, at its own cost, ensure that the G-Cloud Services comply with the requirements in the PSN Code of Practice.
- 14.4 If any PSN Services are Subcontracted by the Supplier, the Supplier must ensure that the services have the relevant PSN compliance certification.
- 14.5 The Supplier must immediately disconnect its G-Cloud Services from the PSN if the PSN Authority considers there is a risk to the PSN's security and the Supplier agrees that the Buyer and the PSN Authority will not be liable for any actions, damages, costs, and any other Supplier liabilities which may arise.

15. Open source

- 15.1 All software created for the Buyer must be suitable for publication as open source, unless otherwise agreed by the Buyer.
- 15.2 If software needs to be converted before publication as open source, the Supplier must also provide the converted format unless otherwise agreed by the Buyer.

16. Security

- 16.1 If requested to do so by the Buyer, before entering into this Call-Off Contract the Supplier will, within 15 Working Days of the date of this Call-Off Contract, develop (and obtain the Buyer's written approval of) a Security Management Plan and an Information Security Management System. After Buyer approval the Security Management Plan and Information Security Management System will apply during the Term of this Call-Off Contract. Both plans will comply with the Buyer's security policy and protect all aspects and processes associated with the delivery of the Services.
- 16.2 The Supplier will use all reasonable endeavours, software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software.
- 16.3 If Malicious Software causes loss of operational efficiency or loss or corruption of Service Data, the Supplier will help the Buyer to mitigate any losses and restore the Services to operating efficiency as soon as possible.
- 16.4 Responsibility for costs will be at the:

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

17. Guarantee

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

18. Ending the Call-Off Contract

- 18.1 The Buyer can End this Call-Off Contract at any time by giving 30 days' written notice to the Supplier, unless a shorter period is specified in the Order Form. The Supplier's obligation to provide the Services will end on the date in the notice.
- 18.2 The Parties agree that the:
 - 18.2.1 Buyer's right to End the Call-Off Contract under clause 18.1 is reasonable considering the type of cloud Service being provided
 - 18.2.2 Call-Off Contract Charges paid during the notice period are reasonable compensation and cover all the Supplier's avoidable costs or Losses
- 18.3 Subject to clause 24 (Liability), if the Buyer Ends this Call-Off Contract under clause 18.1, it will indemnify the Supplier against any commitments, liabilities or expenditure which result in any unavoidable Loss by the Supplier, provided that the Supplier takes all reasonable steps to mitigate the Loss. If the Supplier has insurance, the Supplier will reduce its unavoidable costs by any insurance sums available. The Supplier will submit a fully itemised and costed list of the unavoidable Loss with supporting evidence.

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

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

18.4.2 any fraud

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

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

18.5.2 an Insolvency Event of the other Party happens

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

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

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

19. Consequences of suspension, ending and expiry

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

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

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

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

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

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

- 19.4.3 the continuing rights, remedies or obligations of the Buyer or the Supplier under clauses
- 7 (Payment, VAT and Call-Off Contract charges)
 - 8 (Recovery of sums due and right of set-off)
 - 9 (Insurance)
 - 10 (Confidentiality)
 - 11 (Intellectual property rights)
 - 12 (Protection of information)
 - 13 (Buyer data)
 - 19 (Consequences of suspension, ending and expiry)
 - 24 (Liability); and incorporated Framework Agreement clauses: 4.1 to 4.6, (Liability), 24 (Conflicts of interest and ethical walls), 35 (Waiver and cumulative remedies)
- 19.4.4 any other provision of the Framework Agreement or this Call-Off Contract which expressly or by implication is in force even if it Ends or expires.
- 19.5 At the end of the Call-Off Contract Term, the Supplier must promptly:
- 19.5.1 return all Buyer Data including all copies of Buyer software, code and any other software licensed by the Buyer to the Supplier under it
- 19.5.2 return any materials created by the Supplier under this Call-Off Contract if the IPRs are owned by the Buyer
- 19.5.3 stop using the Buyer Data and, at the direction of the Buyer, provide the Buyer with a complete and uncorrupted version in electronic form in the formats and on media agreed with the Buyer
- 19.5.4 destroy all copies of the Buyer Data when they receive the Buyer's written instructions to do so or 12 calendar months after the End or Expiry Date, and provide written confirmation to the Buyer that the data has been securely destroyed, except if the retention of Buyer Data is required by Law
- 19.5.5 work with the Buyer on any ongoing work
- 19.5.6 return any sums prepaid for Services which have not been delivered to the Buyer, within 10 Working Days of the End or Expiry Date
- 19.6 Each Party will return all of the other Party's Confidential Information and confirm this has been done, unless there is a legal requirement to keep it or this Call-Off Contract states otherwise.
- 19.7 All licences, leases and authorisations granted by the Buyer to the Supplier will cease at the end of the Call-Off Contract Term without the need for the Buyer to serve notice except if this Call-Off Contract states otherwise.

20. Notices

20.1 Any notices sent must be in writing. For the purpose of this clause, an email is accepted as being 'in writing'.

- Manner of delivery: email
- Deemed time of delivery: 9am on the first Working Day after sending
- Proof of service: Sent in an emailed letter in PDF format to the correct email address without any error message

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

21. Exit plan

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

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

21.3 If the Buyer has reserved the right in the Order Form to extend the Call-Off Contract Term beyond 36 months the Supplier must provide the Buyer with an additional exit plan for approval by the Buyer at least 8 weeks before the 30 month anniversary of the Start date.

21.4 The Supplier must ensure that the additional exit plan clearly sets out the Supplier's methodology for achieving an orderly transition of the Services from the Supplier to the Buyer or its replacement Supplier at the expiry of the proposed extension period or if the contract Ends during that period.

21.5 Before submitting the additional exit plan to the Buyer for approval, the Supplier will work with the Buyer to ensure that the additional exit plan is aligned with the Buyer's own exit plan and strategy.

21.6 The Supplier acknowledges that the Buyer's right to take the Term beyond 36 months is subject to the Buyer's own governance process. Where the Buyer is a central government department, this includes the need to obtain approval from GDS under the Spend Controls process. The approval to extend will only be given if the Buyer can clearly demonstrate that the Supplier's additional exit plan ensures that:

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

21.6.2 there will be no adverse impact on service continuity

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

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

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

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

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

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

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

21.8.4 the testing and assurance strategy for exported Buyer Data

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

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

22. Handover to replacement supplier

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

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

22.1.2 other information reasonably requested by the Buyer

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

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

23. Force majeure

23.1 If a Force Majeure event prevents a Party from performing its obligations under this Call-Off Contract for more than 30 consecutive days, the other Party may End this Call-Off Contract with immediate effect by written notice.

24. Liability

24.1 Subject to incorporated Framework Agreement clauses 4.1 to 4.6, each Party's Yearly total liability for Defaults under or in connection with this Call-Off Contract shall not exceed the greater of five hundred thousand pounds (£500,000) or one hundred and twenty-five per cent (125%) of the Charges paid and/or committed to be paid in that Year (or such greater sum (if any) as may be specified in the Order Form).

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

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

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

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

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

25. Premises

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

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

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

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

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

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

25.5.2 comply with Buyer requirements for the conduct of personnel

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

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

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

26. Equipment

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

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

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

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

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

28. Environmental requirements

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

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

29. The Employment Regulations (TUPE)

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

29.2 Twelve months before this Call-Off Contract expires, or after the Buyer has given notice

to

End it, and within 28 days of the Buyer's request, the Supplier will fully and accurately disclose to the Buyer all staff information including, but not limited to, the total number of staff assigned for the purposes of TUPE to the Services. For each person identified the Supplier must provide details of:

- 29.2.1 the activities they perform
- 29.2.2 age
- 29.2.3 start date
- 29.2.4 place of work
- 29.2.5 notice period
- 29.2.6 redundancy payment entitlement
- 29.2.7 salary, benefits and pension entitlements
- 29.2.8 employment status
- 29.2.9 identity of employer
- 29.2.10 working arrangements
- 29.2.11 outstanding liabilities
- 29.2.12 sickness absence
- 29.2.13 copies of all relevant employment contracts and related documents
- 29.2.14 all information required under regulation 11 of TUPE or as reasonably requested by the Buyer

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

- 29.3 In the 12 months before the expiry of this Call-Off Contract, the Supplier will not change the identity and number of staff assigned to the Services (unless reasonably requested by the Buyer) or their terms and conditions, other than in the ordinary course of business.
- 29.4 The Supplier will co-operate with the re-tendering of this Call-Off Contract by allowing the Replacement Supplier to communicate with and meet the affected employees or their representatives.
- 29.5 The Supplier will indemnify the Buyer or any Replacement Supplier for all Loss arising from both:
- 29.5.1 its failure to comply with the provisions of this clause
 - 29.5.2 any claim by any employee or person claiming to be an employee (or their employee representative) of the Supplier which arises or is alleged to arise from any act or omission by the Supplier on or before the date of the Relevant Transfer
- 29.6 The provisions of this clause apply during the Term of this Call-Off Contract and indefinitely after it Ends or expires.

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

30. Additional G-Cloud services

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

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

31. Collaboration

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

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

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

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

32. Variation process

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

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

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

33. Data Protection Legislation (GDPR)

33.1 Pursuant to clause 2.1 and for the avoidance of doubt, clause 28 of the Framework Agreement is incorporated into this Call-Off Contract. For reference, the appropriate UK GDPR templates which are required to be completed in accordance with clause 28 are reproduced in this Call-Off Contract document at Schedule 7.

Schedule 1: Services

Access to the 'Percipio Skillsoft Expert 2.0' product package as described in Supplier's Service Definition document found at <https://assets.applytosupply.digitalmarketplace.service.gov.uk/g-cloud-13/documents/711758/624944213956241-service-definition-document-2022-05-17-1647.pdf> for an Authorized Audience of 1200 staff of Buyer.

and

Access to the 'Percipio PeopleCert ITIL® Foundation Training & Certificate Bundle' for an Authorized Audience of 300 staff of Buyer.

Schedule 2: Call-Off Contract charges

For each individual Service, the applicable Call-Off Contract Charges (in accordance with the Supplier's Platform pricing document) can't be amended during the term of the Call-Off Contract. The detailed Charges breakdown for the provision of Services during the Term will include:

- Access to the 'Percipio Skillsoft Expert 2.0' product package for an Authorized Audience of 1200 staff of Buyer: $1200 \times £147.78 = £177,336.00$ (£212,803.40 Inc VAT)
- Access to 'Percipio PeopleCert ITIL® Foundation Training & Certificate Bundle' for an Authorized Audience of 300 staff of Buyer: at no additional charge to that for the licence for access to the 'Percipio Skillsoft Expert 2.0' product package detailed immediately above.

Schedule 3: Collaboration agreement

This agreement is made on [enter date]

between:

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

Whereas the:

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

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

1. Definitions and interpretation

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

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

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

1.1.3 “Contractor’s Confidential Information” has the meaning set out in the Call-Off Contracts

1.1.4 “Confidential Information” means the Buyer Confidential Information or any

Collaboration Supplier's Confidential Information

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

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

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

1.1.8 "Detailed Collaboration Plan" has the meaning given in clause 3.2

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

1.1.10 "Effective Date" means [insert date]

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

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

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

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

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

1.2 General

1.2.1 As used in this Agreement the:

1.2.1.1 masculine includes the feminine and the neuter

1.2.1.2 singular includes the plural and the other way round

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

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

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

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

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

2. Term of the agreement

2.1 This Agreement will come into force on the Effective Date and, unless earlier terminated in accordance with clause 10, will expire 6 months after the expiry or termination (however arising) of the exit period of the last Call-Off Contract (the "Term").

2.2 A Collaboration Supplier's duty to perform the Collaboration Activities will continue until the end of the exit period of its last relevant Call-Off Contract.

3. Provision of the collaboration plan

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

3.2 Within 10 Working Days (or any other period as agreed in writing by the Buyer and the Collaboration Suppliers) of [receipt of the proposals] or [the Effective Date], the Buyer will prepare a plan for the Collaboration Activities (the "Detailed Collaboration Plan"). The Detailed Collaboration Plan will include full details of the activities and interfaces that involve all of the Collaboration Suppliers to ensure the receipt of the services under each

Collaboration Supplier's respective [contract] [Call-Off Contract], by the Buyer. The Detailed Collaboration Plan will be based on the Outline Collaboration Plan and will be submitted to the Collaboration Suppliers for approval.

3.3 The Collaboration Suppliers will provide the help the Buyer needs to prepare the Detailed Collaboration Plan.

3.4 The Collaboration Suppliers will, within 10 Working Days of receipt of the Detailed Collaboration Plan, either:

3.4.1 approve the Detailed Collaboration Plan

3.4.2 reject the Detailed Collaboration Plan, giving reasons for the rejection

3.5 The Collaboration Suppliers may reject the Detailed Collaboration Plan under clause 3.4.2 only if it is not consistent with their Outline Collaboration Plan in that it imposes additional, more onerous, obligations on them.

3.6 If the parties fail to agree the Detailed Collaboration Plan under clause 3.4, the dispute will be resolved using the Dispute Resolution Process.

4. Collaboration activities

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

5. Invoicing

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

6. Confidentiality

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

6.3.2 in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party

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

6.3.4 independently developed without access to the Confidential Information

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

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

7. Warranties

7.1 Each Collaboration Supplier warrant and represent that:

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

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

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

8. Limitation of liability

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

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

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

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

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

8.5.1 indirect loss or damage

8.5.2 special loss or damage

8.5.3 consequential loss or damage

8.5.4 loss of profits (whether direct or indirect)

8.5.5 loss of turnover (whether direct or indirect)

8.5.6 loss of business opportunities (whether direct or indirect)

8.5.7 damage to goodwill (whether direct or indirect)

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

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

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

9. Dispute resolution process

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

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

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

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

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

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

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

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

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

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

10. Termination and consequences of termination

10.1 Termination

10.1.1 The Buyer has the right to terminate this Agreement at any time by notice in writing to the Collaboration Suppliers whenever the Buyer has the right to terminate a Collaboration Supplier's [respective contract] [Call-Off Contract].

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

10.2 Consequences of termination

10.2.1 Subject to any other right or remedy of the parties, the Collaboration Suppliers and the Buyer will continue to comply with their respective obligations under the [contracts] [Call-Off Contracts] following the termination (however arising) of this Agreement.

- 10.2.2 Except as expressly provided in this Agreement, termination of this Agreement will be without prejudice to any accrued rights and obligations under this Agreement.

11. General provisions

11.1 Force majeure

- 11.1.1 For the purposes of this Agreement, the expression “Force Majeure Event” will mean any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to any party, the party's personnel or any other failure of a Subcontractor.
- 11.1.2 Subject to the remaining provisions of this clause 11.1, any party to this Agreement may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.
- 11.1.3 A party cannot claim relief if the Force Majeure Event or its level of exposure to the event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 11.1.4 The affected party will immediately give the other parties written notice of the Force Majeure Event. The notification will include details of the Force Majeure Event together with evidence of its effect on the obligations of the affected party, and any action the affected party proposes to take to mitigate its effect.
- 11.1.5 The affected party will notify the other parties in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following the notification, this Agreement will continue to be performed on the terms existing immediately before the Force Majeure Event unless agreed otherwise in writing by the parties.

11.2 Assignment and subcontracting

- 11.2.1 Subject to clause 11.2.2, the Collaboration Suppliers will not assign, transfer, novate, sub-license or declare a trust in respect of its rights under all or a part of this Agreement or the benefit or advantage without the prior written consent of the Buyer.
- 11.2.2 Any subcontractors identified in the Detailed Collaboration Plan can perform those elements identified in the Detailed Collaboration Plan to be performed by the Subcontractors.

11.3 Notices

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

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

11.4 Entire agreement

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

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

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

11.5 Rights of third parties

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

11.6 Severability

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

11.7 Variations

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

11.8 No waiver

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

as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.

11.9 Governing law and jurisdiction

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

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

For and on behalf of the Buyer

Signed by:

Full name (capitals):

Position:

Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position:

Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position:

Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position:

Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position:

Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position:

Date:

For and on behalf of the [Company name]

Signed by:

Full name (capitals):

Position:

Date:

Collaboration Agreement Schedule 1: List of contracts

Collaboration supplier	Name/reference of contract	Effective date of contract

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

2.1.1 Scots Law and Jurisdiction

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

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

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

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

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

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

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

2.3 Discrimination

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

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

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

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

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

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

2.4 Equality policies and practices

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

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

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

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

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

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

Subcontractors during the Call-Off Contract Period by any Industrial or Fair Employment Tribunal or court,

The Supplier will take any necessary steps (including the dismissal or replacement of any relevant staff or Subcontractor(s)) as the Customer directs and will seek the advice of the Equality Commission in order to prevent any offence or repetition of the unlawful discrimination as the case may be.

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

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

2.5 Equality

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

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

2.6 Health and safety

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

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

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

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

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

2.7 Criminal damage

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

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

2.7.2 If during the Call-Off Contract Period any assets (or any part thereof) is or are damaged or destroyed by any circumstance giving rise to a claim for

compensation under the provisions of the Compensation Order the following provisions of this clause 2.7 will apply.

- 2.7.3 The Supplier will make (or will procure that the appropriate organisation make) all appropriate claims under the Compensation Order as soon as possible after the CDO Event and will pursue any claim diligently and at its cost. If appropriate, the Customer will also make and pursue a claim diligently under the Compensation Order. Any appeal against a refusal to meet any claim or against the amount of the award will be at the Customer's cost and the Supplier will (at no additional cost to the Customer) provide any help the Customer reasonably requires with the appeal.
- 2.7.4 The Supplier will apply any compensation paid under the Compensation Order in respect of damage to the relevant assets towards the repair, reinstatement or replacement of the assets affected.

Schedule 5: Guarantee

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

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

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

(2) The Buyer whose offices are **[insert Buyer's official address]** ('Beneficiary')

Whereas:

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

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

Suggested headings are as follows:

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

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

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

Definitions and interpretation

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

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

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

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

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

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

Unless the context otherwise requires:

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

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

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

Guarantee and indemnity

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

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

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

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

Obligation to enter into a new contract

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

Demands and notices

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

[Enter Address of the Guarantor in England and Wales]

[Enter Email address of the Guarantor

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

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

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

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

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

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

Beneficiary's protections

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

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

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

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

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

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

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

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

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

Any release, discharge or settlement between the Guarantor and the Buyer will be conditional upon no security, disposition or payment to the Buyer by the Guarantor or any other person being void, set aside or ordered to be refunded following any enactment or Law relating to liquidation, administration or insolvency or for any other reason. If such condition will not be fulfilled, the Buyer will be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Buyer will be entitled to retain this security before and after the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Buyer from the Guarantor for such period as the Buyer may determine.

Representations and warranties

The Guarantor hereby represents and warrants to the Buyer that:

- the Guarantor is duly incorporated and is a validly existing company under the Laws of its place of incorporation
- has the capacity to sue or be sued in its own name
- the Guarantor has power to carry on its business as now being conducted and to own its Property and other assets
- the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee
- the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including

entry into and performance of a Call-Off Contract following Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:

- the Guarantor's memorandum and articles of association or other equivalent constitutional documents, any existing Law, statute, rule or Regulation or any judgment, decree or permit to which the Guarantor is subject
- the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets
- all governmental and other authorisations, approvals, licences and consents, required or desirable

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

Payments and set-off

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

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

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

Guarantor's acknowledgement

The Guarantor warrants, acknowledges and confirms to the Buyer that it has not entered into this

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

Assignment

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

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

Severance

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

Third-party rights

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

Governing law

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

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

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

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

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

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

EXECUTED as a DEED by

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

Director

Director/Secretary

Schedule 6: Glossary and interpretations

In this Call-Off Contract the following expressions mean:

Expression	Meaning
Additional Services	Any services ancillary to the G-Cloud Services that are in the scope of Framework Agreement Clause 2 (Services) which a Buyer may request.
Admission Agreement	The agreement to be entered into to enable the Supplier to participate in the relevant Civil Service pension scheme(s).
Application	The response submitted by the Supplier to the Invitation to Tender (known as the Invitation to Apply on the Platform).
Audit	An audit carried out under the incorporated Framework Agreement clauses.
Background IPRs	<p>For each Party, IPRs:</p> <ul style="list-style-type: none"> owned by that Party before the date of this Call-Off Contract (as may be enhanced and/or modified but not as a consequence of the Services) including IPRs contained in any of the Party's Know-How, documentation and processes created by the Party independently of this Call-Off Contract, or <p>For the Buyer, Crown Copyright which isn't available to the Supplier otherwise than under this Call-Off Contract, but excluding IPRs owned by that Party in Buyer software or Supplier software.</p>

Buyer	The contracting authority ordering services as set out in the Order Form.
Buyer Data	All data supplied by the Buyer to the Supplier including Personal Data and Service Data that is owned and managed by the Buyer.
Buyer Personal Data	The Personal Data supplied by the Buyer to the Supplier for purposes of, or in connection with, this Call-Off Contract.
Buyer Representative	The representative appointed by the Buyer under this Call-Off Contract.

Buyer Software	Software owned by or licensed to the Buyer (other than under this Agreement), which is or will be used by the Supplier to provide the Services.
Call-Off Contract	This call-off contract entered into following the provisions of the Framework Agreement for the provision of Services made between the Buyer and the Supplier comprising the Order Form, the Call-Off terms and conditions, the Call-Off schedules and the Collaboration Agreement.

Charges	The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under this Call-Off Contract.
Collaboration Agreement	An agreement, substantially in the form set out at Schedule 3, between the Buyer and any combination of the Supplier and contractors, to ensure collaborative working in their delivery of the Buyer's Services and to ensure that the Buyer receives end-to-end services across its IT estate.
Commercially Sensitive Information	Information, which the Buyer has been notified about by the Supplier in writing before the Start date with full details of why the Information is deemed to be commercially sensitive.
Confidential Information	<p>Data, Personal Data and any information, which may include (but isn't limited to) any:</p> <ul style="list-style-type: none"> • information about business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above • other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential').
Control	'Control' as defined in section 1124 and 450 of the Corporation Tax Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly.

Controller	Takes the meaning given in the UK GDPR.
Crown	The government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies carrying out functions on its behalf.

Data Loss Event	Event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Call-Off Contract and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
Data Protection Impact Assessment (DPIA)	An assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data.
Data Protection Legislation (DPL)	(i) the UK GDPR as amended from time to time; (ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy; (iii) all applicable Law about the Processing of Personal Data and privacy.
Data Subject	Takes the meaning given in the UK GDPR

Default	<p>Default is any:</p> <ul style="list-style-type: none"> • breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term) • other default, negligence or negligent statement of the Supplier, of its Subcontractors or any Supplier Staff (whether by act or omission), in connection with or in relation to this Call-Off Contract <p>Unless otherwise specified in the Framework Agreement the Supplier is liable to CCS for a Default of the Framework Agreement and in relation to a Default of the Call-Off Contract, the Supplier is liable to the Buyer.</p>
DPA 2018	Data Protection Act 2018.
Employment Regulations	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) ('TUPE') .
End	Means to terminate; and Ended and Ending are construed accordingly.
Environmental Information Regulations or EIR	The Environmental Information Regulations 2004 together with any guidance or codes of practice issued by the Information Commissioner or relevant government department about the regulations.
Equipment	The Supplier's hardware, computer and telecoms devices, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from CCS or the Buyer) in the performance of its obligations under this Call-Off Contract.

ESI Reference Number	The 14 digit ESI reference number from the summary of the outcome screen of the ESI tool.
Employment Status Indicator test tool or ESI tool	The HMRC Employment Status Indicator test tool. The most up-to-date version must be used. At the time of drafting the tool may be found here: https://www.gov.uk/guidance/check-employment-status-fortax
Expiry Date	The expiry date of this Call-Off Contract in the Order Form.

Force Majeure	<p>A force Majeure event means anything affecting either Party's performance of their obligations arising from any:</p> <ul style="list-style-type: none"> • acts, events or omissions beyond the reasonable control of the affected Party • riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare • acts of government, local government or Regulatory Bodies • fire, flood or disaster and any failure or shortage of power or fuel • industrial dispute affecting a third party for which a substitute third party isn't reasonably available <p>The following do not constitute a Force Majeure event:</p> <ul style="list-style-type: none"> • any industrial dispute about the Supplier, its staff, or failure in the Supplier's (or a Subcontractor's) supply chain • any event which is attributable to the wilful act, neglect or failure to take reasonable precautions by the Party seeking to rely on Force Majeure • the event was foreseeable by the Party seeking to rely on Force Majeure at the time this Call-Off Contract was entered into • any event which is attributable to the Party seeking to rely on Force Majeure and its failure to comply with its own business continuity and disaster recovery plans
Former Supplier	<p>A supplier supplying services to the Buyer before the Start date that are the same as or substantially similar to the Services. This also includes any Subcontractor or the Supplier (or any subcontractor of the Subcontractor).</p>
Framework Agreement	<p>The clauses of framework agreement RM1557.13 together with the Framework Schedules.</p>

Fraud	Any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Call-Off Contract or
	defrauding or attempting to defraud or conspiring to defraud the Crown.
Freedom of Information Act or FoIA	The Freedom of Information Act 2000 and any subordinate legislation made under the Act together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to the legislation.
G-Cloud Services	The cloud services described in Framework Agreement Clause 2 (Services) as defined by the Service Definition, the Supplier Terms and any related Application documentation, which the Supplier must make available to CCS and Buyers and those services which are deliverable by the Supplier under the Collaboration Agreement.
UK GDPR	The retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679).
Good Industry Practice	Standards, practices, methods and process conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar undertaking in the same or similar circumstances.

Government Procurement Card	The government's preferred method of purchasing and payment for low value goods or services.
Guarantee	The guarantee described in Schedule 5.
Guidance	Any current UK government guidance on the Public Contracts Regulations 2015. In the event of a conflict between any current UK government guidance and the Crown Commercial Service guidance, current UK government guidance will take precedence.
Implementation Plan	The plan with an outline of processes (including data standards for migration), costs (for example) of implementing the services which may be required as part of Onboarding.
Indicative test	ESI tool completed by contractors on their own behalf at the request of CCS or the Buyer (as applicable) under clause 4.6.
Information	Has the meaning given under section 84 of the Freedom of Information Act 2000.
Information security management system	The information security management system and process developed by the Supplier in accordance with clause 16.1.

Inside IR35	<p>Contractual engagements which would be determined to be within the scope of the IR35 Intermediaries legislation if assessed using the ESI tool.</p>
Insolvency event	<p>Can be:</p> <ul style="list-style-type: none"> • a voluntary arrangement • a winding-up petition • the appointment of a receiver or administrator • an unresolved statutory demand • a Schedule A1 moratorium • a Dun & Bradstreet rating of 10 or less
Intellectual Property Rights or IPR	<p>Intellectual Property Rights are:</p> <ul style="list-style-type: none"> • copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information • applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction • all other rights having equivalent or similar effect in any country or jurisdiction
Intermediary	<p>For the purposes of the IR35 rules an intermediary can be:</p> <ul style="list-style-type: none"> • the supplier's own limited company • a service or a personal service company • a partnership <p>It does not apply if you work for a client through a Managed Service Company (MSC) or agency (for example, an employment agency).</p>

IPR claim	As set out in clause 11.5.
IR35	IR35 is also known as 'Intermediaries legislation'. It's a set of rules that affect tax and National Insurance where a Supplier is contracted to work for a client through an Intermediary.
IR35 assessment	Assessment of employment status using the ESI tool to determine if engagement is Inside or Outside IR35.

Know-How	All ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the G-Cloud Services but excluding know-how already in the Supplier's or Buyer's possession before the Start date.
Law	Any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply.
Loss	All losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and ' Losses ' will be interpreted accordingly.

Lot	Any of the 3 Lots specified in the ITT and Lots will be construed accordingly.
Malicious Software	Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
Management Charge	The sum paid by the Supplier to CCS being an amount of up to 1% but currently set at 0.75% of all Charges for the Services invoiced to Buyers (net of VAT) in each month throughout the duration of the Framework Agreement and thereafter, until the expiry or End of any Call-Off Contract.
Management Information	The management information specified in Framework Agreement Schedule 6.
Material Breach	Those breaches which have been expressly set out as a Material Breach and any other single serious breach or persistent failure to perform as required under this Call-Off Contract.
Ministry of Justice Code	The Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000.

New Fair Deal	The revised Fair Deal position in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 as amended.
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Order	An order for G-Cloud Services placed by a contracting body with the Supplier in accordance with the ordering processes.
Order Form	The order form set out in Part A of the Call-Off Contract to be used by a Buyer to order G-Cloud Services.
Ordered G-Cloud Services	G-Cloud Services which are the subject of an order by the Buyer.
Outside IR35	Contractual engagements which would be determined to not be within the scope of the IR35 intermediaries legislation if assessed using the ESI tool.
Party	The Buyer or the Supplier and ‘Parties’ will be interpreted accordingly.

Personal Data	Takes the meaning given in the UK GDPR.
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Personal Data Breach	Takes the meaning given in the UK GDPR.
Platform	The government marketplace where Services are available for Buyers to buy.
Processing	Takes the meaning given in the UK GDPR.
Processor	Takes the meaning given in the UK GDPR.

Prohibited act	<p>To directly or indirectly offer, promise or give any person working for or engaged by a Buyer or CCS a financial or other advantage to:</p> <ul style="list-style-type: none"> • induce that person to perform improperly a relevant function or activity • reward that person for improper performance of a relevant function or activity • commit any offence: <ul style="list-style-type: none"> ○ under the Bribery Act 2010 ○ under legislation creating offences concerning Fraud ○ at common Law concerning Fraud ○ committing or attempting or conspiring to commit Fraud
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Project Specific IPRs	<p>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.</p>
Property	<p>Assets and property including technical infrastructure, IPRs and equipment.</p>
Protective Measures	<p>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.</p>

PSN or Public Services Network	The Public Services Network (PSN) is the government's highperformance network which helps public sector organisations work together, reduce duplication and share resources.
Regulatory body or bodies	Government departments and other bodies which, whether under statute, codes of practice or otherwise, are entitled to investigate or influence the matters dealt with in this Call-Off Contract.
Relevant person	Any employee, agent, servant, or representative of the Buyer, any other public body or person employed by or on behalf of the Buyer, or any other public body.
Relevant Transfer	A transfer of employment to which the employment regulations applies.
Replacement Services	Any services which are the same as or substantially similar to any of the Services and which the Buyer receives in substitution for any of the services after the expiry or Ending or partial Ending of the Call- Off Contract, whether those services are provided by the Buyer or a third party.

Replacement supplier	Any third-party service provider of replacement services appointed by the Buyer (or where the Buyer is providing replacement Services for its own account, the Buyer).
Security management plan	The Supplier's security management plan developed by the Supplier in accordance with clause 16.1.
Services	The services ordered by the Buyer as set out in the Order Form.
Service data	Data that is owned or managed by the Buyer and used for the GCloud Services, including backup data.
Service definition(s)	The definition of the Supplier's G-Cloud Services provided as part of their Application that includes, but isn't limited to, those items listed in Clause 2 (Services) of the Framework Agreement.
Service description	The description of the Supplier service offering as published on the Platform.

Service Personal Data	<p>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.</p>
Spend controls	<p>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-controlscheck-if-you-need-approval-to-spend-money-on-a-service</p>
Start date	<p>The Start date of this Call-Off Contract as set out in the Order Form.</p>
Subcontract	<p>Any contract or agreement or proposed agreement between the Supplier and a subcontractor in which the subcontractor agrees to provide to the Supplier the G-Cloud Services or any part thereof or facilities or goods and services necessary for the provision of the GCloud Services or any part thereof.</p>
Subcontractor	<p>Any third party engaged by the Supplier under a subcontract (permitted under the Framework Agreement and the Call-Off Contract) and its servants or agents in connection with the provision of G-Cloud Services.</p>

Subprocessor	Any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract.
Supplier	The person, firm or company identified in the Order Form.
Supplier Representative	The representative appointed by the Supplier from time to time in relation to the Call-Off Contract.

Supplier staff	All persons employed by the Supplier together with the Supplier's servants, agents, suppliers and subcontractors used in the performance of its obligations under this Call-Off Contract.
Supplier Terms	The relevant G-Cloud Service terms and conditions as set out in the Terms and Conditions document supplied as part of the Supplier's Application.
Term	The term of this Call-Off Contract as set out in the Order Form.

Variation	This has the meaning given to it in clause 32 (Variation process).
Working Days	Any day other than a Saturday, Sunday or public holiday in England and Wales.
Year	A contract year.

Schedule 7: UK GDPR Information

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

Annex 1: Processing Personal Data

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

1.1 The contact details of the Buyer's Data Protection Officer are: Dominic Hartley,

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

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

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

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Buyer is Controller and the Supplier is Processor</p> <p>The Parties acknowledge that in accordance with paragraphs 2 to paragraph 15 of Schedule 7 and for the purposes of the Data Protection Legislation, Buyer is the Controller and the Supplier is the Processor of the Personal Data recorded below</p> <ul style="list-style-type: none"> Names and associated email addresses for Buyer staff members that will require a user licence for the service together with any other information regarding such individuals' place in Buyer's organisation that Buyer legitimately provides to Supplier <p>The Supplier is Controller and the Buyer is Processor</p>

	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Buyer is the Processor in accordance with paragraph 2 to paragraph 16 of the following Personal Data:</p> <ul style="list-style-type: none"> • Not applicable. <p>The Parties are Joint Controllers The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <p>Not applicable</p> <p>The Parties are Independent Controllers of Personal Data</p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> • Business contact details of Supplier Personnel for which the Supplier is the Controller, • Business contact details of any directors, officers, employees, agents, consultants and contractors of the Buyer (excluding the Supplier Personnel) engaged in the performance of the Buyer's duties under the Contract) for which the Buyer is Controller.
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Duration of the Processing	For the 12-month Term of the Call-Off Contract from 24-Jan-24 to 23-Jan-25, and if Buyer exercises its option to extend the Term of the Call-Off Contract by an additional year, during such extension year from 24-Jan-24 to 23-Jan-25 also.
Nature and purposes of the Processing	<p>Name and email address of intended users of the service will be provided to the Supplier by the Buyer in order to enable access to the Percipio eLearning platform. Buyer's users will use their name or email address to log in to the Percipio eLearning platform. The following become associated with an intended user or actual user's name and email address (and any other information regarding such individual's place in Buyer's organisation provided to Supplier) through Buyer's use of the Percipio eLearning platform and eLearning content deployed therefrom: (a) Assignment of specific eLearning content to an individual by Buyer learning administrators</p> <p>(b) Use by a user of specific eLearning content (launch, duration of access, assessment results, etcetera). The supplier stores these details to enable users to benefit from the service and for Buyer to track and report on learning undertaken by users.</p>
Type of Personal Data	First name, last name, email address together with any other information regarding such individuals' place in Buyer's organisation that Buyer legitimately provides to Supplier.

Categories of Data Subject	Staff of Buyer

<p>Plan for return and destruction of the data once the Processing is complete UNLESS requirement under Union or Member State law to preserve that type of data</p>	<p>The data shall be kept for no longer than is needed for the fulfilment of this service. Once this contract or any renewal of this service expires it is expected that the data be erased. Upon written request by Buyer to delete or return the data, Supplier shall, after a recovery period of up to thirty (30) days following such request, comply with Buyer's instructions as soon as reasonably practicable. Notwithstanding the foregoing, absent instructions from Buyer, Supplier shall</p>
	<p>delete all data within a hundred and eighty (180) days following the aforementioned expiry.</p>

Annex 2: Joint Controller Agreement

1. Joint Controller Status and Allocation of Responsibilities

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

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

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

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

2. Undertakings of both Parties

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

- (a) report to the other Party every [**insert number**] months on:

- (i) the volume of Data Subject Request (or purported Data Subject Requests) from Data Subjects (or third parties on their behalf);
 - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
 - (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
 - (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
 - (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law, that it has received in relation to the subject matter of the Contract during that period;
- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1(a)(i) to (v);
 - (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
 - (d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
 - (e) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
 - (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
 - (g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
 - (i) are aware of and comply with their 's duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information

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

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

3. Data Protection Breach

3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

- (a) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation; and
- (b) all reasonable assistance, including:
 - (i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and

recovering the compromised Personal Data and compliance with the applicable guidance;

- (ii) co-operation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;
- (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
- (iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 3.2.

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

- (a) the nature of the Personal Data Breach;
- (b) the nature of Personal Data affected;
- (c) the categories and number of Data Subjects concerned;
- (d) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
- (e) measures taken or proposed to be taken to address the Personal Data Breach; and
- (f) describe the likely consequences of the Personal Data Breach.

4. Audit

4.1 The Supplier shall permit:

- (a) the Buyer, or a third-party auditor acting under the Buyer's direction, to conduct, at the Buyer's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or

- (b) the Buyer, or a third-party auditor acting under the Buyer's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

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

5. Impact Assessments

5.1 The Parties shall:

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

6. ICO Guidance

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

7. Liabilities for Data Protection Breach

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

7.1 If financial penalties are imposed by the Information Commissioner on either the Buyer or the Supplier for a Personal Data Breach ("Financial Penalties") then the following shall occur:

- (a) if in the view of the Information Commissioner, the Buyer is responsible for the
Personal Data Breach, in that it is caused as a result of the actions or

inaction of the Buyer, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Buyer, then the Buyer shall be responsible for the payment of such Financial Penalties. In this case, the Buyer will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Supplier shall provide to the Buyer and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;

(b) if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or

(c) if no view as to responsibility is expressed by the Information Commissioner, then the Buyer and the Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any Financial Penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the procedure set out in clause 32 of the Framework Agreement (Managing disputes).

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

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

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

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

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

7.4 Nothing in either clause 7.2 or clause 7.3 shall preclude the Buyer and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim

Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Buyer.

8. Termination

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

9. Sub-Processing

9.1 In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:

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

10. Data Retention

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



Information Commissioner's Office

Standard Data Protection Clauses to be issued by the Commissioner under S119A(1) Data Protection Act 2018

International Data Transfer Agreement

VERSION A1.0, in force 21 March 2022

This IDTA has been issued by the Information Commissioner for Parties making Restricted Transfers. The Information Commissioner considers that it provides Appropriate Safeguards for Restricted Transfers when it is entered into as a legally binding contract.

Part 1: Tables

Table 1: Parties and signatures

Start date	24 th January 2024	
The Parties	Exporter (who sends the Restricted Transfer)	Importer (who receives the Restricted Transfer)
Parties' details	<p>Full legal name: Department for Work and Pensions (if different):</p> <p>Main address (if a company registered address): Quarry House, Quarry Hill, Leeds, West Yorkshire LS2 7UA</p> <p>Trading name</p> <p>Official registration number (if any) (company number or similar identifier): N/A</p>	<p>Full legal name: Skillsoft UK Limited</p> <p>Trading name (if different): Skillsoft</p> <p>Main address (if a company registered address): 1 Bartholomew Lane, London, England, EC2N 2AX</p> <p>Official registration number (if any) (company number or similar identifier): 02051729</p>

Key Contact	Full Name (optional): [Redacted] Job Title: Senior Practice Support Manager Contact details including email: _____	Full Name (optional): Job Title: DPO Contact details including email: [Redacted] _____
Importer Data Subject Contact		Job Title: DPO [Redacted] Contact details including email: Alexis.hernandez@skillsoft.com, cc: ContactDPO@skillsoft.com [Redacted]
Signatures confirming each Party agrees to be bound by this IDTA	Signed for and on behalf of the Exporter set out above Signed: Date of signature: 29.1.2024 Full name: redacted Job title: Senior Practice Support Manager	Signed for and on behalf of the Importer 1/24/2024 [Redacted] Job title: Head of Sales EMEA/Area VP

Table 2: Transfer Details

UK country's law that governs the IDTA:	<input checked="" type="checkbox"/> England and Wales <input type="checkbox"/> Northern Ireland <input type="checkbox"/> Scotland
Primary place for legal claims to be made by the Parties	<input checked="" type="checkbox"/> England and Wales <input type="checkbox"/> Northern Ireland <input type="checkbox"/> Scotland
The status of the Exporter	In relation to the Processing of the Transferred Data: <input checked="" type="checkbox"/> Exporter is a Controller <input type="checkbox"/> Exporter is a Processor or Sub-Processor

The status of the Importer	<p>In relation to the Processing of the Transferred Data:</p> <p><input type="checkbox"/> Importer is a Controller</p> <p><input checked="" type="checkbox"/> Importer is the Exporter's Processor or Sub-Processor</p> <p><input type="checkbox"/> Importer is not the Exporter's Processor or Sub-Processor (and the Importer has been instructed by a Third Party Controller)</p>
Whether UK GDPR applies to the Importer	<p><input checked="" type="checkbox"/> UK GDPR applies to the Importer's Processing of the Transferred Data</p> <p><input type="checkbox"/> UK GDPR does not apply to the Importer's Processing of the Transferred Data</p>
Linked Agreement	<p>If the Importer is the Exporter's Processor or Sub-Processor – the agreement(s) between the Parties which sets out the Processor's or Sub-Processor's instructions for Processing the Transferred Data:</p> <p>Name of agreement: G-Cloud 13 Call-Off Contract</p> <p>Date of agreement: 24th January 2024</p> <p>Parties to the agreement: Department for Work and Pensions and Skillsoft UK Limited</p> <p>Reference (if any): Project_25502_Year 2</p> <p>Other agreements – any agreement(s) between the Parties which set out additional obligations in relation to the Transferred Data, such as a data sharing agreement or service agreement:</p> <p>Name of <input type="text"/> agreement:</p> <p>Date of <input type="text"/> agreement: <input type="text"/></p> <p>Parties to the <input type="text"/> agreement:</p> <p>Reference (if any): <input type="text"/></p> <p>If the Exporter is a Processor or Sub-Processor – the agreement(s) between the Exporter and the Party(s) which sets out the Exporter's instructions for Processing the Transferred Data:</p> <p>Name of <input type="text"/> agreement:</p> <p>Date of <input type="text"/> agreement: <input type="text"/></p> <p>Parties to the <input type="text"/> agreement:</p> <p>Reference (if any): <input type="text"/></p>

Term	<p>The Importer may Process the Transferred Data for the following time period:</p> <p><input checked="" type="checkbox"/> the period for which the Linked Agreement is in force time</p> <p><input type="checkbox"/> period:</p> <p><input type="checkbox"/> (only if the Importer is a Controller or not the Exporter's Processor or Sub-Processor) no longer than is necessary for the Purpose.</p>
Ending the IDTA before the end of the Term	<p><input checked="" type="checkbox"/> The Parties cannot end the IDTA before the end of the Term unless there is a breach of the IDTA or the Parties agree in writing.</p> <p><input type="checkbox"/> The Parties can end the IDTA before the end of the Term by serving: months' written notice, as set out in Section 29 (How to end this IDTA without there being a breach).</p>
Ending the IDTA when the Approved IDTA changes	<p>Which Parties may end the IDTA as set out in Section 29.2:</p> <p><input type="checkbox"/> Importer</p> <p><input type="checkbox"/> Exporter</p> <p><input type="checkbox"/> neither Party</p> <p><input checked="" type="checkbox"/></p>
Can the Importer make further transfers of the Transferred Data?	<p><input checked="" type="checkbox"/> The Importer MAY transfer on the Transferred Data to another organisation or person (who is a different legal entity) in accordance with Section 16.1 (Transferring on the Transferred Data).</p> <p><input type="checkbox"/> The Importer MAY NOT transfer on the Transferred Data to another organisation or person (who is a different legal entity) in accordance with Section 16.1 (Transferring on the Transferred Data).</p>
Specific restrictions when the Importer may transfer on the Transferred Data	<p>The Importer MAY ONLY forward the Transferred Data in accordance with Section 16.1:</p> <p><input type="checkbox"/> if the Exporter tells it in writing that it may do so.</p> <p><input type="checkbox"/> to: </p> <p><input type="checkbox"/> to the authorised receivers (or the categories of authorised receivers) set out in:</p> <p><input checked="" type="checkbox"/> there are no specific restrictions.</p>

Review Dates	<p><input type="checkbox"/> No review is needed as this is a one-off transfer and the Importer does not retain any Transferred Data</p> <p>First review date: <input type="text"/></p> <p>The Parties must review the Security Requirements at least once:</p> <p><input type="checkbox"/> each <input type="text"/> month(s)</p> <p><input type="checkbox"/> each <input type="text"/> quarter</p> <p><input type="checkbox"/> each 6 months</p> <p><input type="checkbox"/> each year</p> <p><input type="checkbox"/> each <input type="text"/> year(s)</p> <p><input checked="" type="checkbox"/> each time there is a change to the Transferred Data, Purposes, Importer Information, TRA or risk assessment</p>
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Table 3: Transferred Data

Transferred Data	<p>The personal data to be sent to the Importer under this IDTA consists of: First name, last name, email address together with any other information regarding such individuals' place in Exporter's organisation that Exporter legitimately provides to Importer</p> <p><input checked="" type="checkbox"/> The categories of Transferred Data will update automatically if the information is updated in the Linked Agreement referred to.</p> <p><input type="checkbox"/> The categories of Transferred Data will NOT update automatically if the information is updated in the Linked Agreement referred to. The Parties must agree a change under Section 5.3.</p>
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Special Categories of Personal Data and criminal convictions and offences	<ul style="list-style-type: none"> <input type="checkbox"/> The Transferred Data includes data relating to: <input type="checkbox"/> racial or ethnic origin <input type="checkbox"/> political opinions <input type="checkbox"/> religious or philosophical beliefs <input type="checkbox"/> trade union membership <input type="checkbox"/> genetic data <input type="checkbox"/> biometric data for the purpose of uniquely identifying a natural person <input type="checkbox"/> physical or mental health <input type="checkbox"/> sex life or sexual orientation <input type="checkbox"/> criminal convictions and offences <input checked="" type="checkbox"/> none of the above <input type="checkbox"/> set out in: <p>And:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The categories of special category and criminal records data will update automatically if the information is updated in the Linked Agreement referred to. <input type="checkbox"/> The categories of special category and criminal records data will NOT update automatically if the information is updated in the Linked Agreement referred to. The Parties must agree a change under Section 5.3.
Relevant Data Subjects	<p>The Data Subjects of the Transferred Data are: as set out in Annex 1 to Schedule 7 of the Linked Agreement</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> The categories of Data Subjects will update automatically if the information is updated in the Linked Agreement referred to. <input type="checkbox"/> The categories of Data Subjects will not update automatically if the information is updated in the Linked Agreement referred to. The Parties must agree a change under Section 5.3.

Purpose	<p><input type="checkbox"/> The Importer may Process the Transferred Data for the following purposes:</p> <p><input checked="" type="checkbox"/> The Importer may Process the Transferred Data for the purposes set out in Annex 1 to Schedule 7 of the Linked Agreement</p> <p>In both cases, any other purposes which are compatible with the purposes set out above.</p> <p><input checked="" type="checkbox"/> The purposes will update automatically if the information is updated in the Linked Agreement referred to.</p> <p><input type="checkbox"/> The purposes will NOT update automatically if the information is updated in the Linked Agreement referred to. The Parties must agree a change under Section 5.3.</p>
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Table 4: Security Requirements

Security of Transmission	The Supplier's Cloud Operations Services documentation referenced in Supplier's G-Cloud 13 Service Definition Document available at the Digital Marketplace and available at https://documentation.skillssoft.com/
Security of Storage	The Supplier's Cloud Operations Services documentation referenced in Supplier's G-Cloud 13 Service Definition Document available at the Digital Marketplace and available at https://documentation.skillssoft.com/
Security of Processing	The Supplier's Cloud Operations Services documentation referenced in Supplier's G-Cloud 13 Service Definition Document available at the Digital Marketplace and available at https://documentation.skillssoft.com/
Organisational security measures	The Supplier's Cloud Operations Services documentation referenced in Supplier's G-Cloud 13 Service Definition Document available at the Digital Marketplace and available at https://documentation.skillssoft.com/
Technical security minimum requirements	The Supplier's Cloud Operations Services documentation referenced in Supplier's G-Cloud 13 Service Definition Document available at the Digital Marketplace and available at https://documentation.skillssoft.com/

Updates to the Security Requirements	<input checked="" type="checkbox"/> The Security Requirements will update automatically if the information is updated in the Linked Agreement referred to. <input type="checkbox"/> The Security Requirements will NOT update automatically if the information is updated in the Linked Agreement referred to. The Parties must agree a change under Section 5.3.
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Part 2: Extra Protection Clauses

Extra Protection Clauses:	
(i) Extra technical security protections	
(ii) Extra organisational protections	
(iii) Extra contractual protections	

Part 3: Commercial Clauses

Commercial Clauses	Contained in the Linked Agreement
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Part 4: Mandatory Clauses

Information that helps you to understand this IDTA

This IDTA and Linked Agreements

Each Party agrees to be bound by the terms and conditions set out in the IDTA, in exchange for the other Party also agreeing to be bound by the IDTA.

This IDTA is made up of:

Part one: Tables;

Part two: Extra Protection Clauses;

Part three: Commercial Clauses; and

Part four: Mandatory Clauses.

The IDTA starts on the Start Date and ends as set out in Sections 29 or 30.

If the Importer is a Processor or Sub-Processor instructed by the Exporter: the Exporter must ensure that, on or before the Start Date and during the Term, there is a Linked Agreement which is enforceable between the Parties and which complies with Article 28 UK GDPR (and which they will ensure continues to comply with Article 28 UK GDPR).

References to the Linked Agreement or to the Commercial Clauses are to that Linked Agreement or to those Commercial Clauses only in so far as they are consistent with the Mandatory Clauses.

Legal Meaning of Words

If a word starts with a capital letter it has the specific meaning set out in the Legal Glossary in Section 36.

To make it easier to read and understand, this IDTA contains headings and guidance notes. Those are not part of the binding contract which forms the IDTA.

You have provided all the information required

The Parties must ensure that the information contained in Part one: Tables is correct and complete at the Start Date and during the Term.

In Table 2: Transfer Details, if the selection that the Parties are Controllers, Processors or Sub-Processors is wrong (either as a matter of fact or as a result of applying the UK Data Protection Laws) then:

the terms and conditions of the Approved IDTA which apply to the correct option which was not selected will apply; and

the Parties and any Relevant Data Subjects are entitled to enforce the terms and conditions of the Approved IDTA which apply to that correct option.

In Table 2: Transfer Details, if the selection that the UK GDPR applies is wrong (either as a matter of fact or as a result of applying the UK Data Protection Laws), then the terms and conditions of the IDTA will still apply to the greatest extent possible.

How to sign the IDTA

The Parties may choose to each sign (or execute):

the same copy of this IDTA;

two copies of the IDTA. In that case, each identical copy is still an original of this IDTA, and together all those copies form one agreement;

a separate, identical copy of the IDTA. In that case, each identical copy is still an original of this IDTA, and together all those copies form one agreement,

unless signing (or executing) in this way would mean that the IDTA would not be binding on the Parties under Local Laws.

Changing this IDTA

Each Party must not change the Mandatory Clauses as set out in the Approved IDTA, except only:

to ensure correct cross-referencing: cross-references to Part one: Tables (or any Table), Part two: Extra Protections, and/or Part three: Commercial Clauses can be changed where the Parties have set out the information in a different format, so that the cross-reference is to the correct location of the same information, or where clauses have been removed as they do not apply, as set out below;

to remove those Sections which are expressly stated not to apply to the selections made by the Parties in Table 2: Transfer Details, that the Parties are Controllers, Processors or Sub-Processors and/or that the Importer is subject to, or not subject to, the UK GDPR. The Exporter and Importer understand and acknowledge that any removed Sections may still apply and form a part of this IDTA if they have been removed incorrectly, including because the wrong selection is made in Table 2: Transfer Details;

so the IDTA operates as a multi-party agreement if there are more than two Parties to the IDTA. This may include nominating a lead Party or lead Parties which can make decisions on behalf of some or all of the other Parties which relate to this IDTA (including reviewing Table 4: Security Requirements and Part two: Extra Protection Clauses, and making updates to Part one: Tables (or any Table), Part two: Extra Protection Clauses, and/or Part three: Commercial Clauses); and/or

to update the IDTA to set out in writing any changes made to the Approved IDTA under Section 5.4, if the Parties want to. The changes will apply automatically without updating them as described in Section 5.4;

provided that the changes do not reduce the Appropriate Safeguards.

If the Parties wish to change the format of the information included in Part one: Tables, Part two: Extra Protection Clauses or Part three: Commercial Clauses of the Approved IDTA, they may do so by agreeing to the change in writing, provided that the change does not reduce the Appropriate Safeguards.

If the Parties wish to change the information included in Part one: Tables, Part two: Extra Protection Clauses or Part three: Commercial Clauses of this IDTA (or the equivalent information), they may do so by agreeing to the change in writing, provided that the change does not reduce the Appropriate Safeguards.

From time to time, the ICO may publish a revised Approved IDTA which:

makes reasonable and proportionate changes to the Approved IDTA, including correcting errors in the Approved IDTA; and/or

reflects changes to UK Data Protection Laws.

The revised Approved IDTA will specify the start date from which the changes to the Approved IDTA are effective and whether an additional Review Date is required as a result of the changes. This IDTA is automatically amended as set out in the revised Approved IDTA from the start date specified.

Understanding this IDTA

This IDTA must always be interpreted in a manner that is consistent with UK Data Protection Laws and so that it fulfils the Parties' obligation to provide the Appropriate Safeguards.

If there is any inconsistency or conflict between UK Data Protection Laws and this IDTA, the UK Data Protection Laws apply.

If the meaning of the IDTA is unclear or there is more than one meaning, the meaning which most closely aligns with the UK Data Protection Laws applies.

Nothing in the IDTA (including the Commercial Clauses or the Linked Agreement) limits or excludes either Party's liability to Relevant Data Subjects or to the ICO under this IDTA or under UK Data Protection Laws.

If any wording in Parts one, two or three contradicts the Mandatory Clauses, and/or seeks to limit or exclude any liability to Relevant Data Subjects or to the ICO, then that wording will not apply.

The Parties may include provisions in the Linked Agreement which provide the Parties with enhanced rights otherwise covered by this IDTA. These enhanced rights may be subject to commercial terms, including payment, under the Linked Agreement, but this will not affect the rights granted under this IDTA.

If there is any inconsistency or conflict between this IDTA and a Linked Agreement or any other agreement, this IDTA overrides that Linked Agreement or any other agreements, even if those agreements have been negotiated by the Parties. The exceptions to this are where (and in so far as):

- the inconsistent or conflicting terms of the Linked Agreement or other agreement provide greater protection for the Relevant Data Subject's rights, in which case those terms will override the IDTA; and

- a Party acts as Processor and the inconsistent or conflicting terms of the Linked Agreement are obligations on that Party expressly required by Article 28 UK GDPR, in which case those terms will override the inconsistent or conflicting terms of the IDTA in relation to Processing by that Party as Processor.

The words "include", "includes", "including", "in particular" are used to set out examples and not to set out a finite list.

References to:

- singular or plural words or people, also includes the plural or singular of those words or people;

- legislation (or specific provisions of legislation) means that legislation (or specific

provision) as it may change over time. This includes where that legislation (or specific provision) has been consolidated, re-enacted and/or replaced after this IDTA has been signed; and

any obligation not to do something, includes an obligation not to allow or cause that thing to be done by anyone else.

Which laws apply to this IDTA

This IDTA is governed by the laws of the UK country set out in Table 2: Transfer Details. If no selection has been made, it is the laws of England and Wales. This does not apply to Section 35 which is always governed by the laws of England and Wales.

How this IDTA provides Appropriate Safeguards

The Appropriate Safeguards

The purpose of this IDTA is to ensure that the Transferred Data has Appropriate Safeguards when Processed by the Importer during the Term. This standard is met when and for so long as:

both Parties comply with the IDTA, including the Security Requirements and any Extra Protection Clauses; and

the Security Requirements and any Extra Protection Clauses provide a level of security which is appropriate to the risk of a Personal Data Breach occurring and the impact on Relevant Data Subjects of such a Personal Data Breach, including considering any Special Category Data within the Transferred Data.

The Exporter must:

ensure and demonstrate that this IDTA (including any Security Requirements and Extra Protection Clauses) provides Appropriate Safeguards; and

(if the Importer reasonably requests) provide it with a copy of any TRA.

The Importer must:

before receiving any Transferred Data, provide the Exporter with all relevant information regarding Local Laws and practices and the protections and risks which apply to the Transferred Data when it is Processed by the Importer, including any information which may reasonably be required for the Exporter to carry out any TRA (the "Importer Information");

co-operate with the Exporter to ensure compliance with the Exporter's obligations under the UK Data Protection Laws;

review whether any Importer Information has changed, and whether any Local Laws contradict its obligations in this IDTA and take reasonable steps to verify this, on a regular basis. These reviews must be at least as frequent as the Review Dates; and

inform the Exporter as soon as it becomes aware of any Importer Information changing, and/or any Local Laws which may prevent or limit the Importer complying with its obligations in this IDTA. This information then forms part of the Importer Information.

The Importer must ensure that at the Start Date and during the Term:

the Importer Information is accurate;

it has taken reasonable steps to verify whether there are any Local Laws which contradict its obligations in this IDTA or any additional information regarding Local Laws which may be relevant to this IDTA.

Each Party must ensure that the Security Requirements and Extra Protection Clauses provide a level of security which is appropriate to the risk of a Personal Data Breach occurring and the impact on Relevant Data Subjects of such a Personal Data Breach.

Reviews to ensure the Appropriate Safeguards continue

Each Party must:

review this IDTA (including the Security Requirements and Extra Protection Clauses and the Importer Information) at regular intervals, to ensure that the IDTA remains accurate and up to date and continues to provide the Appropriate Safeguards. Each Party will carry out these reviews as frequently as the relevant Review Dates or sooner; and

inform the other party in writing as soon as it becomes aware if any information contained in either this IDTA, any TRA or Importer Information is no longer accurate and up to date.

If, at any time, the IDTA no longer provides Appropriate Safeguards the Parties must Without Undue Delay:

pause transfers and Processing of Transferred Data whilst a change to the Tables is agreed. The Importer may retain a copy of the Transferred Data during this pause, in which case the Importer must carry out any Processing required to maintain, so far as possible, the measures it was taking to achieve the Appropriate Safeguards prior to the time the IDTA no longer provided Appropriate Safeguards, but no other Processing;

agree a change to Part one: Tables or Part two: Extra Protection Clauses which will maintain the Appropriate Safeguards (in accordance with Section 5); and

where a change to Part one: Tables or Part two: Extra Protection Clauses which maintains the Appropriate Safeguards cannot be agreed, the Exporter must end this IDTA by written notice on the Importer.

The ICO

Each Party agrees to comply with any reasonable requests made by the ICO in relation to this IDTA or its Processing of the Transferred Data.

The Exporter will provide a copy of any TRA, the Importer Information and this IDTA to the ICO, if the ICO requests.

The Importer will provide a copy of any Importer Information and this IDTA to the ICO, if the ICO requests.

The Exporter

Exporter's obligations

The Exporter agrees that UK Data Protection Laws apply to its Processing of the Transferred Data, including transferring it to the Importer.

The Exporter must:

- comply with the UK Data Protection Laws in transferring the Transferred Data to the Importer;

- comply with the Linked Agreement as it relates to its transferring the Transferred Data to the Importer; and

- carry out reasonable checks on the Importer's ability to comply with this IDTA, and take appropriate action including under Section 9.2, Section 29 or Section 30, if at any time it no longer considers that the Importer is able to comply with this IDTA or to provide Appropriate Safeguards.

The Exporter must comply with all its obligations in the IDTA, including any in the Security Requirements, and any Extra Protection Clauses and any Commercial Clauses.

The Exporter must co-operate with reasonable requests of the Importer to pass on notices or other information to and from Relevant Data Subjects or any Third Party Controller where it is not reasonably practical for the Importer to do so. The Exporter may pass these on via a third party if it is reasonable to do so.

The Exporter must co-operate with and provide reasonable assistance to the Importer, so that the Importer is able to comply with its obligations to the Relevant Data Subjects under Local Law and this IDTA.

The Importer

General Importer obligations

The Importer must:

- only Process the Transferred Data for the Purpose;

- comply with all its obligations in the IDTA, including in the Security Requirements, any Extra Protection Clauses and any Commercial Clauses;

- comply with all its obligations in the Linked Agreement which relate to its Processing of the Transferred Data;

- keep a written record of its Processing of the Transferred Data, which demonstrate its compliance with this IDTA, and provide this written record if asked to do so by the Exporter;

if the Linked Agreement includes rights for the Exporter to obtain information or carry out an audit, provide the Exporter with the same rights in relation to this IDTA; and

if the ICO requests, provide the ICO with the information it would be required on request to provide to the Exporter under this Section 12.1 (including the written record of its Processing, and the results of audits and inspections).

The Importer must co-operate with and provide reasonable assistance to the Exporter and any Third Party Controller, so that the Exporter and any Third Party Controller are able to comply with their obligations under UK Data Protection Laws and this IDTA.

Importer's obligations if it is subject to the UK Data Protection Laws

If the Importer's Processing of the Transferred Data is subject to UK Data Protection Laws, it agrees that:

UK Data Protection Laws apply to its Processing of the Transferred Data, and the ICO has jurisdiction over it in that respect; and

it has and will comply with the UK Data Protection Laws in relation to the Processing of the Transferred Data.

If Section 13.1 applies and the Importer complies with Section 13.1, it does not need to comply with:

- Section 14 (Importer's obligations to comply with key data protection principles);
- Section 15 (What happens if there is an Importer Personal Data Breach);
- Section 15 (How Relevant Data Subjects can exercise their data subject rights); and
- Section 21 (How Relevant Data Subjects can exercise their data subject rights – if the Importer is the Exporter's Processor or Sub-Processor).

Importer's obligations to comply with key data protection principles

The Importer does not need to comply with this Section 14 if it is the Exporter's Processor or Sub-Processor.

The Importer must:

ensure that the Transferred Data it Processes is adequate, relevant and limited to what is necessary for the Purpose;

ensure that the Transferred Data it Processes is accurate and (where necessary) kept up to date, and (where appropriate considering the Purposes) correct or delete any inaccurate Transferred Data it becomes aware of Without Undue Delay; and

ensure that it Processes the Transferred Data for no longer than is reasonably necessary for the Purpose.

What happens if there is an Importer Personal Data Breach

If there is an Importer Personal Data Breach, the Importer must:

take reasonable steps to fix it, including to minimise the harmful effects on Relevant Data Subjects, stop it from continuing, and prevent it happening again. If the Importer is the Exporter's Processor or Sub-Processor: these steps must comply with the Exporter's instructions and the Linked Agreement and be in co-operation with the Exporter and any Third Party Controller; and

ensure that the Security Requirements continue to provide (or are changed in accordance with this IDTA so they do provide) a level of security which is appropriate to the risk of a Personal Data Breach occurring and the impact on Relevant Data Subjects of such a Personal Data Breach.

If the Importer is a Processor or Sub-Processor: if there is an Importer Personal Data Breach, the Importer must:

notify the Exporter Without Undue Delay after becoming aware of the breach, providing the following information:

a description of the nature of the Importer Personal Data Breach;

(if and when possible) the categories and approximate number of Data Subjects and Transferred Data records concerned;

likely consequences of the Importer Personal Data Breach;

steps taken (or proposed to be taken) to fix the Importer Personal Data Breach (including to minimise the harmful effects on Relevant Data Subjects, stop it from continuing, and prevent it happening again) and to ensure that Appropriate Safeguards are in place;

contact point for more information; and

any other information reasonably requested by the Exporter,

if it is not possible for the Importer to provide all the above information at the same time, it may do so in phases, Without Undue Delay; and

assist the Exporter (and any Third Party Controller) so the Exporter (or any Third Party Controller) can inform Relevant Data Subjects or the ICO or any other relevant regulator or authority about the Importer Personal Data Breach Without Undue Delay.

If the Importer is a Controller: if the Importer Personal Data Breach is likely to result in a risk to the rights or freedoms of any Relevant Data Subject the Importer must notify the Exporter Without Undue Delay after becoming aware of the breach, providing the following information:

a description of the nature of the Importer Personal Data Breach;

(if and when possible) the categories and approximate number of Data Subjects and Transferred Data records concerned;

likely consequences of the Importer Personal Data Breach;

steps taken (or proposed to be taken) to fix the Importer Personal Data Breach (including to minimise the harmful effects on Relevant Data Subjects, stop it from continuing, and prevent it happening again) and to ensure that Appropriate Safeguards are in place;

contact point for more information; and
any other information reasonably requested by the Exporter.

If it is not possible for the Importer to provide all the above information at the same time, it may do so in phases, Without Undue Delay.

If the Importer is a Controller: if the Importer Personal Data Breach is likely to result in a high risk to the rights or freedoms of any Relevant Data Subject, the Importer must inform those Relevant Data Subjects Without Undue Delay, except in so far as it requires disproportionate effort, and provided the Importer ensures that there is a public communication or similar measures whereby Relevant Data Subjects are informed in an equally effective manner.

The Importer must keep a written record of all relevant facts relating to the Importer Personal Data Breach, which it will provide to the Exporter and the ICO on request.

This record must include the steps it takes to fix the Importer Personal Data Breach (including to minimise the harmful effects on Relevant Data Subjects, stop it from continuing, and prevent it happening again) and to ensure that Security Requirements continue to provide a level of security which is appropriate to the risk of a Personal Data Breach occurring and the impact on Relevant Data Subjects of such a Personal Data Breach.

Transferring on the Transferred Data

The Importer may only transfer on the Transferred Data to a third party if it is permitted to do so in Table 2: Transfer Details Table, the transfer is for the Purpose, the transfer does not breach the Linked Agreement, and one or more of the following apply:

the third party has entered into a written contract with the Importer containing the same level of protection for Data Subjects as contained in this IDTA (based on the role of the recipient as controller or processor), and the Importer has conducted a risk assessment to ensure that the Appropriate Safeguards will be protected by that contract; or

the third party has been added to this IDTA as a Party; or

if the Importer was in the UK, transferring on the Transferred Data would comply with Article 46 UK GDPR; or

if the Importer was in the UK transferring on the Transferred Data would comply with one of the exceptions in Article 49 UK GDPR; or

the transfer is to the UK or an Adequate Country.

The Importer does not need to comply with Section 16.1 if it is transferring on Transferred Data and/or allowing access to the Transferred Data in accordance with Section 23 (Access Requests and Direct Access).

Importer's responsibility if it authorises others to perform its obligations

The Importer may sub-contract its obligations in this IDTA to a Processor or Sub-Processor (provided it complies with Section 16).

If the Importer is the Exporter's Processor or Sub-Processor: it must also comply with the Linked Agreement or be with the written consent of the Exporter.

The Importer must ensure that any person or third party acting under its authority, including a Processor or Sub-Processor, must only Process the Transferred Data on its instructions.

The Importer remains fully liable to the Exporter, the ICO and Relevant Data Subjects for its obligations under this IDTA where it has sub-contracted any obligations to its Processors and Sub-Processors, or authorised an employee or other person to perform them (and references to the Importer in this context will include references to its Processors, Sub-Processors or authorised persons).

What rights do individuals have?

The right to a copy of the IDTA

If a Party receives a request from a Relevant Data Subject for a copy of this IDTA:

- it will provide the IDTA to the Relevant Data Subject and inform the other Party, as soon as reasonably possible;
- it does not need to provide copies of the Linked Agreement, but it must provide all the information from those Linked Agreements referenced in the Tables;
- it may redact information in the Tables or the information provided from the Linked Agreement if it is reasonably necessary to protect business secrets or confidential information, so long as it provides the Relevant Data Subject with a summary of those redactions so that the Relevant Data Subject can understand the content of the Tables or the information provided from the Linked Agreement.

The right to Information about the Importer and its Processing

The Importer does not need to comply with this Section 19 if it is the Exporter's Processor or Sub-Processor.

The Importer must ensure that each Relevant Data Subject is provided with details of:

- the Importer (including contact details and the Importer Data Subject Contact);
- the Purposes; and
- any recipients (or categories of recipients) of the Transferred Data;

The Importer can demonstrate it has complied with this Section 19.2 if the information is given (or has already been given) to the Relevant Data Subjects by the Exporter or another party.

The Importer does not need to comply with this Section 19.2 in so far as to do so would be impossible or involve a disproportionate effort, in which case, the Importer must make the information publicly available.

The Importer must keep the details of the Importer Data Subject Contact up to date and publicly available. This includes notifying the Exporter in writing of any such changes.

The Importer must make sure those contact details are always easy to access for all Relevant Data Subjects and be able to easily communicate with Data Subjects in the English language Without Undue Delay.

How Relevant Data Subjects can exercise their data subject rights

The Importer does not need to comply with this Section 20 if it is the Exporter's Processor or Sub-Processor.

If an individual requests, the Importer must confirm whether it is Processing their Personal Data as part of the Transferred Data.

The following Sections of this Section 20, relate to a Relevant Data Subject's Personal Data which forms part of the Transferred Data the Importer is Processing.

If the Relevant Data Subject requests, the Importer must provide them with a copy of their Transferred Data:

Without Undue Delay (and in any event within one month);

at no greater cost to the Relevant Data Subject than it would be able to charge if it were subject to the UK Data Protection Laws;

in clear and plain English that is easy to understand; and in

an easily accessible form

together with

(if needed) a clear and plain English explanation of the Transferred Data so that it is understandable to the Relevant Data Subject; and

information that the Relevant Data Subject has the right to bring a claim for compensation under this IDTA.

If a Relevant Data Subject requests, the Importer must:

rectify inaccurate or incomplete Transferred Data; erase Transferred

Data if it is being Processed in breach of this IDTA; cease using it for

direct marketing purposes; and

comply with any other reasonable request of the Relevant Data Subject, which the Importer would be required to comply with if it were subject to the UK Data Protection Laws.

The Importer must not use the Transferred Data to make decisions about the Relevant Data Subject based solely on automated processing, including profiling (the "Decision-Making"), which produce legal effects concerning the Relevant Data Subject or similarly significantly affects them, except if it is permitted by Local Law and:

the Relevant Data Subject has given their explicit consent to such Decision-Making; or

Local Law has safeguards which provide sufficiently similar protection for the Relevant Data Subjects in relation to such Decision-Making, as to the relevant protection the Relevant Data Subject would have if such Decision-Making was in the UK; or the Extra Protection Clauses provide safeguards for the Decision-Making which provide sufficiently similar protection for the Relevant Data Subjects in relation to such Decision-Making, as to the relevant protection the Relevant Data Subject would have if such Decision-Making was in the UK.

How Relevant Data Subjects can exercise their data subject rights– if the Importer is the Exporter's Processor or Sub-Processor

Where the Importer is the Exporter's Processor or Sub-Processor: If the Importer receives a request directly from an individual which relates to the Transferred Data it must pass that request on to the Exporter Without Undue Delay. The Importer must only respond to that individual as authorised by the Exporter or any Third Party Controller.

Rights of Relevant Data Subjects are subject to the exemptions in the UK Data Protection Laws

The Importer is not required to respond to requests or provide information or notifications under Sections 18, 19, 20, 21 and 23 if:

it is unable to reasonably verify the identity of an individual making the request; or

the requests are manifestly unfounded or excessive, including where requests are repetitive. In that case the Importer may refuse the request or may charge the Relevant Data Subject a reasonable fee; or

a relevant exemption would be available under UK Data Protection Laws, were the Importer subject to the UK Data Protection Laws.

If the Importer refuses an individual's request or charges a fee under Section 22.1.2 it will set out in writing the reasons for its refusal or charge, and inform the Relevant Data Subject that they are entitled to bring a claim for compensation under this IDTA in the case of any breach of this IDTA.

How to give third parties access to Transferred Data under Local Laws

Access requests and direct access

In this Section 23 an "Access Request" is a legally binding request (except for requests only binding by contract law) to access any Transferred Data and "Direct Access" means direct access to any Transferred Data by public authorities of which the Importer is aware.

The Importer may disclose any requested Transferred Data in so far as it receives an Access Request, unless in the circumstances it is reasonable for it to challenge that Access Request on the basis there are significant grounds to believe that it is unlawful.

In so far as Local Laws allow and it is reasonable to do so, the Importer will Without Undue Delay provide the following with relevant information about any Access Request or Direct Access: the Exporter; any Third Party Controller; and where the Importer is a Controller, any Relevant Data Subjects.

In so far as Local Laws allow, the Importer must:

make and keep a written record of Access Requests and Direct Access, including (if known): the dates, the identity of the requestor/accessor, the purpose of the Access Request or Direct Access, the type of data requested or accessed, whether it was challenged or appealed, and the outcome; and the Transferred Data which was provided or accessed; and

provide a copy of this written record to the Exporter on each Review Date and any time the Exporter or the ICO reasonably requests.

Giving notice

If a Party is required to notify any other Party in this IDTA it will be marked for the attention of the relevant Key Contact and sent by e-mail to the e-mail address given for the Key Contact.

If the notice is sent in accordance with Section 24.1, it will be deemed to have been delivered at the time the e-mail was sent, or if that time is outside of the receiving Party's normal business hours, the receiving Party's next normal business day, and provided no notice of non-delivery or bounceback is received.

The Parties agree that any Party can update their Key Contact details by giving 14 days' (or more) notice in writing to the other Party.

General clauses

In relation to the transfer of the Transferred Data to the Importer and the Importer's Processing of the Transferred Data, this IDTA and any Linked Agreement:

contain all the terms and conditions agreed by the Parties; and
override all previous contacts and arrangements, whether oral or in writing.

If one Party made any oral or written statements to the other before entering into this IDTA (which are not written in this IDTA) the other Party confirms that it has not relied on those statements and that it will not have a legal remedy if those statements are untrue or incorrect, unless the statement was made fraudulently.

Neither Party may novate, assign or obtain a legal charge over this IDTA (in whole or in part) without the written consent of the other Party, which may be set out in the Linked Agreement.

Except as set out in Section 17.1, neither Party may sub contract its obligations under this IDTA without the written consent of the other Party, which may be set out in the Linked Agreement.

This IDTA does not make the Parties a partnership, nor appoint one Party to act as the agent of the other Party.

If any Section (or part of a Section) of this IDTA is or becomes illegal, invalid or unenforceable, that will not affect the legality, validity and enforceability of any other Section (or the rest of that Section) of this IDTA.

If a Party does not enforce, or delays enforcing, its rights or remedies under or in relation to this IDTA, this will not be a waiver of those rights or remedies. In addition, it will not restrict that Party's ability to enforce those or any other right or remedy in future.

If a Party chooses to waive enforcing a right or remedy under or in relation to this IDTA, then this waiver will only be effective if it is made in writing. Where a Party provides such a written waiver:

it only applies in so far as it explicitly waives specific rights or remedies;

it shall not prevent that Party from exercising those rights or remedies in the future (unless it has explicitly waived its ability to do so); and

it will not prevent that Party from enforcing any other right or remedy in future.

What happens if there is a breach of this IDTA?

Breaches of this IDTA

Each Party must notify the other Party in writing (and with all relevant details) if it:

has breached this IDTA; or

it should reasonably anticipate that it may breach this IDTA, and provide any information about this which the other Party reasonably requests.

In this IDTA "Significant Harmful Impact" means that there is more than a minimal risk of a breach of the IDTA causing (directly or indirectly) significant damage to any Relevant Data Subject or the other Party.

Breaches of this IDTA by the Importer

If the Importer has breached this IDTA, and this has a Significant Harmful Impact, the Importer must take steps Without Undue Delay to end the Significant Harmful Impact, and if that is not possible to reduce the Significant Harmful Impact as much as possible.

Until there is no ongoing Significant Harmful Impact on Relevant Data Subjects:

the Exporter must suspend sending Transferred Data to the Importer;

If the Importer is the Exporter's Processor or Sub-Processor: if the Exporter requests, the importer must securely delete all Transferred Data or securely return it to the Exporter (or a third party named by the Exporter); and

if the Importer has transferred on the Transferred Data to a third party receiver under

Section 16, and the breach has a Significant Harmful Impact on Relevant Data Subject when it is Processed by or on behalf of that third party receiver, the Importer must:

notify the third party receiver of the breach and suspend sending it Transferred Data; and

if the third party receiver is the Importer's Processor or Sub-Processor: make the third party receiver securely delete all Transferred Data being Processed by it or on its behalf, or securely return it to the Importer (or a third party named by the Importer).

If the breach cannot be corrected Without Undue Delay, so there is no ongoing Significant Harmful Impact on Relevant Data Subjects, the Exporter must end this IDTA under Section 30.1.

Breaches of this IDTA by the Exporter

If the Exporter has breached this IDTA, and this has a Significant Harmful Impact, the Exporter must take steps Without Undue Delay to end the Significant Harmful Impact and if that is not possible to reduce the Significant Harmful Impact as much as possible.

Until there is no ongoing risk of a Significant Harmful Impact on Relevant Data Subjects, the Exporter must suspend sending Transferred Data to the Importer.

If the breach cannot be corrected Without Undue Delay, so there is no ongoing Significant Harmful Impact on Relevant Data Subjects, the Importer must end this IDTA under Section 30.1.

Ending the IDTA

How to end this IDTA without there being a breach

The IDTA will end:

at the end of the Term stated in Table 2: Transfer Details; or

if in Table 2: Transfer Details, the Parties can end this IDTA by providing written notice to the other: at the end of the notice period stated;

at any time that the Parties agree in writing that it will end; or at

the time set out in Section 29.2.

If the ICO issues a revised Approved IDTA under Section 5.4, if any Party selected in Table 2 "Ending the IDTA when the Approved IDTA changes", will as a direct result of the changes in the Approved IDTA have a substantial, disproportionate and demonstrable increase in:

its direct costs of performing its obligations under the IDTA; and/or its

risk under the IDTA,

and in either case it has first taken reasonable steps to reduce that cost or risk so that it is not substantial and disproportionate, that Party may end the IDTA at the end of a reasonable notice period, by providing written notice for that period to the other Party before the start date of the revised Approved IDTA.

How to end this IDTA if there is a breach

A Party may end this IDTA immediately by giving the other Party written notice if: the other Party has breached this IDTA and this has a Significant Harmful Impact. This includes repeated minor breaches which taken together have a Significant Harmful Impact, and

the breach can be corrected so there is no Significant Harmful Impact, and the other Party has failed to do so Without Undue Delay (which cannot be more than 14 days of being required to do so in writing); or

the breach and its Significant Harmful Impact cannot be corrected; the Importer can no longer comply with Section 8.3, as there are Local Laws which mean it cannot comply with this IDTA and this has a Significant Harmful Impact.

What must the Parties do when the IDTA ends?

If the parties wish to bring this IDTA to an end or this IDTA ends in accordance with any provision in this IDTA, but the Importer must comply with a Local Law which requires it to continue to keep any Transferred Data then this IDTA will remain in force in respect of any retained Transferred Data for as long as the retained Transferred Data is retained, and the Importer must:

notify the Exporter Without Undue Delay, including details of the relevant Local Law and the required retention period;

retain only the minimum amount of Transferred Data it needs to comply with that Local Law, and the Parties must ensure they maintain the Appropriate Safeguards, and change the Tables and Extra Protection Clauses, together with any TRA to reflect this; and

stop Processing the Transferred Data as soon as permitted by that Local Law and the IDTA will then end and the rest of this Section 29 will apply.

When this IDTA ends (no matter what the reason is):

the Exporter must stop sending Transferred Data to the Importer; and

if the Importer is the Exporter's Processor or Sub-Processor: the Importer must delete all Transferred Data or securely return it to the Exporter (or a third party named by the Exporter), as instructed by the Exporter;

if the Importer is a Controller and/or not the Exporter's Processor or Sub-Processor: the Importer must securely delete all Transferred Data.

the following provisions will continue in force after this IDTA ends (no matter what the reason is):

Section 1 (This IDTA and Linked Agreements);

Section 2 (Legal Meaning of Words);

Section 6 (Understanding this IDTA);

Section 7 (Which laws apply to this IDTA);

Section 10 (The ICO);

Sections 11.1 and 11.4 (Exporter's obligations);

Sections 12.1.2, 12.1.3, 12.1.4, 12.1.5 and 12.1.6 (General Importer obligations);

Section 13.1 (Importer's obligations if it is subject to UK Data Protection Laws);

Section 17 (Importer's responsibility if it authorised others to perform its obligations);

Section 24 (Giving notice);

Section 25 (General clauses);

Section 31 (What must the Parties do when the IDTA ends);

Section 32 (Your liability);

Section 33 (How Relevant Data Subjects and the ICO may bring legal claims);

Section 34 (Courts legal claims can be brought in);

Section 35 (Arbitration); and

Section 36 (Legal Glossary).

How to bring a legal claim under this IDTA

Your liability

The Parties remain fully liable to Relevant Data Subjects for fulfilling their obligations under this IDTA and (if they apply) under UK Data Protection Laws.

Each Party (in this Section, "Party One") agrees to be fully liable to Relevant Data Subjects for the entire damage suffered by the Relevant Data Subject, caused directly or indirectly by:

Party One's breach of this IDTA; and/or

where Party One is a Processor, Party One's breach of any provisions regarding its Processing of the Transferred Data in the Linked Agreement;

where Party One is a Controller, a breach of this IDTA by the other Party if it involves Party One's Processing of the Transferred Data (no matter how minimal)

in each case unless Party One can prove it is not in any way responsible for the event giving rise to the damage.

If one Party has paid compensation to a Relevant Data Subject under Section 32.2, it is entitled to claim back from the other Party that part of the compensation corresponding to the other Party's responsibility for the damage, so that the compensation is fairly divided between the Parties.

The Parties do not exclude or restrict their liability under this IDTA or UK Data Protection Laws, on the basis that they have authorised anyone who is not a Party (including a Processor) to perform any of their obligations, and they will remain responsible for performing those obligations.

How Relevant Data Subjects and the ICO may bring legal claims

The Relevant Data Subjects are entitled to bring claims against the Exporter and/or Importer for breach of the following (including where their Processing of the Transferred Data is involved in a breach of the following by either Party):

- **Section 1** (This IDTA and Linked Agreements);
- **Section 3** (You have provided all the information required by Part one: Tables and Part two: Extra Protection Clauses);
- **Section 8** (The Appropriate Safeguards);
- **Section 9** (Reviews to ensure the Appropriate Safeguards continue);
- **Section 11** (Exporter's obligations);
- **Section 12** (General Importer Obligations);
- **Section 13** (Importer's obligations if it is subject to UK Data Protection Laws);
- **Section 14** (Importer's obligations to comply with key data protection laws);
- **Section 15** (What happens if there is an Importer Personal Data Breach);
- **Section 16** (Transferring on the Transferred Data);
- **Section 17** (Importer's responsibility if it authorises others to perform its obligations);
- **Section 18** (The right to a copy of the IDTA);
- **Section 19** (The Importer's contact details for the Relevant Data Subjects);
- **Section 20** (How Relevant Data Subjects can exercise their data subject rights);
- **Section 21** (How Relevant Data Subjects can exercise their data subject rights– if the Importer is the Exporter's Processor or Sub-Processor);
- **Section 23** (Access Requests and Direct Access);

- **Section 26** (Breaches of this IDTA);
- **Section 27** (Breaches of this IDTA by the Importer);
- **Section 28** (Breaches of this IDTA by the Exporter);
- **Section 30** (How to end this IDTA if there is a breach);
- **Section 31** (What must the Parties do when the IDTA ends); and
- any other provision of the IDTA which expressly or by implication benefits the Relevant Data Subjects.

The ICO is entitled to bring claims against the Exporter and/or Importer for breach of the following Sections: Section 10 (The ICO), Sections 11.1 and 11.2 (Exporter's obligations), Section 12.1.6 (General Importer obligations) and Section 13 (Importer's obligations if it is subject to UK Data Protection Laws).

No one else (who is not a Party) can enforce any part of this IDTA (including under the Contracts (Rights of Third Parties) Act 1999).

The Parties do not need the consent of any Relevant Data Subject or the ICO to make changes to this IDTA, but any changes must be made in accordance with its terms.

In bringing a claim under this IDTA, a Relevant Data Subject may be represented by a not-for-profit body, organisation or association under the same conditions set out in Article 80(1) UK GDPR and sections 187 to 190 of the Data Protection Act 2018.

Courts legal claims can be brought in

The courts of the UK country set out in Table 2: Transfer Details have non-exclusive jurisdiction over any claim in connection with this IDTA (including non-contractual claims).

The Exporter may bring a claim against the Importer in connection with this IDTA (including non-contractual claims) in any court in any country with jurisdiction to hear the claim.

The Importer may only bring a claim against the Exporter in connection with this IDTA (including non-contractual claims) in the courts of the UK country set out in the Table 2: Transfer Details

Relevant Data Subjects and the ICO may bring a claim against the Exporter and/or the Importer in connection with this IDTA (including non-contractual claims) in any court in any country with jurisdiction to hear the claim.

Each Party agrees to provide to the other Party reasonable updates about any claims or complaints brought against it by a Relevant Data Subject or the ICO in connection with the Transferred Data (including claims in arbitration).

Arbitration

Instead of bringing a claim in a court under Section 34, any Party, or a Relevant Data Subject may elect to refer any dispute arising out of or in connection with this IDTA (including

non-contractual claims) to final resolution by arbitration under the Rules of the London Court of International Arbitration, and those Rules are deemed to be incorporated by reference into this Section 35.

The Parties agree to submit to any arbitration started by another Party or by a Relevant Data Subject in accordance with this Section 35.

There must be only one arbitrator. The arbitrator (1) must be a lawyer qualified to practice law in one or more of England and Wales, or Scotland, or Northern Ireland and (2) must have experience of acting or advising on disputes relating to UK Data Protection Laws.

London shall be the seat or legal place of arbitration. It does not matter if the Parties selected a different UK country as the 'primary place for legal claims to be made' in Table 2: Transfer Details.

The English language must be used in the arbitral proceedings.

English law governs this Section 35. This applies regardless of whether or not the parties selected a different UK country's law as the 'UK country's law that governs the IDTA' in Table 2: Transfer Details.

Legal Glossary

Word or Phrase	Legal definition (this is how this word or phrase must be interpreted in the IDTA)
Access Request	As defined in Section 23, as a legally binding request (except for requests only binding by contract law) to access any Transferred Data.
Adequate Country	A third country, or: a territory; one or more sectors or organisations within a third country; an international organisation; which the Secretary of State has specified by regulations provides an adequate level of protection of Personal Data in accordance with Section 17A of the Data Protection Act 2018.
Appropriate Safeguards	The standard of protection over the Transferred Data and of the Relevant Data Subject's rights, which is required by UK Data Protection Laws when you are making a Restricted Transfer relying on standard data protection clauses under Article 46(2)(d) UK GDPR.

Word or Phrase	Legal definition (this is how this word or phrase must be interpreted in the IDTA)
Approved IDTA	The template IDTA A1.0 issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 5.4.
Commercial Clauses	The commercial clauses set out in Part three.
Controller	As defined in the UK GDPR.
Damage	All material and non-material loss and damage.
Data Subject	As defined in the UK GDPR.
Decision-Making	As defined in Section 20.6, as decisions about the Relevant Data Subjects based solely on automated processing, including profiling, using the Transferred Data.
Direct Access	As defined in Section 23 as direct access to any Transferred Data by public authorities of which the Importer is aware.
Exporter	The exporter identified in Table 1: Parties & Signature.
Extra Protection Clauses	The clauses set out in Part two: Extra Protection Clauses.
ICO	The Information Commissioner.

Importer	The importer identified in Table 1: Parties & Signature.
Importer Data Subject Contact	The Importer Data Subject Contact identified in Table 1: Parties & Signature, which may be updated in accordance with Section 19.
Importer Information	As defined in Section 8.3.1, as all relevant information regarding Local Laws and practices and the protections and risks which apply to the Transferred Data when it is Processed by the Importer, including for the Exporter to carry out any TRA.

Word or Phrase	Legal definition (this is how this word or phrase must be interpreted in the IDTA)
Importer Personal Data Breach	A 'personal data breach' as defined in UK GDPR, in relation to the Transferred Data when Processed by the Importer.
Linked Agreement	The linked agreements set out in Table 2: Transfer Details (if any).
Local Laws	Laws which are not the laws of the UK and which bind the Importer.
Mandatory Clauses	Part four: Mandatory Clauses of this IDTA.
Notice Period	As set out in Table 2: Transfer Details.
Party/Parties	The parties to this IDTA as set out in Table 1: Parties & Signature.
Personal Data	As defined in the UK GDPR.

Personal Data Breach	As defined in the UK GDPR.
Processing	As defined in the UK GDPR. When the IDTA refers to Processing by the Importer, this includes where a third party Sub-Processor of the Importer is Processing on the Importer's behalf.
Processor	As defined in the UK GDPR.
Purpose	The 'Purpose' set out in Table 2: Transfer Details, including any purposes which are not incompatible with the purposes stated or referred to.
Relevant Data Subject	A Data Subject of the Transferred Data.
Restricted Transfer	A transfer which is covered by Chapter V of the UK GDPR

Word or Phrase	Legal definition (this is how this word or phrase must be interpreted in the IDTA)
Review Dates	The review dates or period for the Security Requirements set out in Table 2: Transfer Details, and any review dates set out in any revised Approved IDTA.
Significant Harmful Impact	As defined in Section 26.2 as where there is more than a minimal risk of the breach causing (directly or indirectly) significant harm to any Relevant Data Subject or the other Party.

Special Category Data	As described in the UK GDPR, together with criminal conviction or criminal offence data.
Start Date	As set out in Table 1: Parties and signature.
Sub-Processor	<p>A Processor appointed by another Processor to Process Personal Data on its behalf.</p> <p>This includes Sub-Processors of any level, for example a Sub-Sub-Processor.</p>
Tables	The Tables set out in Part one of this IDTA.
Term	As set out in Table 2: Transfer Details.
Third Party Controller	<p>The Controller of the Transferred Data where the Exporter is a Processor or Sub-Processor</p> <p>If there is not a Third Party Controller this can be disregarded.</p>
Transfer Risk Assessment or TRA	A risk assessment in so far as it is required by UK Data Protection Laws to demonstrate that the IDTA provides the Appropriate Safeguards
Transferred Data	Any Personal Data which the Parties transfer, or intend to transfer under this IDTA, as described in Table 2: Transfer Details
UK Data Protection Laws	All laws relating to data protection, the processing of personal data, privacy and/or electronic communications in force from time to time in the UK, including the UK GDPR and the Data Protection Act 2018.
Word or Phrase	<p>Legal definition</p> <p>(this is how this word or phrase must be interpreted in the IDTA)</p>

UK GDPR	As defined in Section 3 of the Data Protection Act 2018.
Without Undue Delay	Without undue delay, as that phrase is interpreted in the UK GDPR.

Alternative Part 4 Mandatory Clauses:

Mandatory Clauses	Part 4: Mandatory Clauses of the Approved IDTA, being the template IDTA A.1.0 issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 5.4 of those Mandatory Clauses.
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