



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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Article I. Part A: Order Form

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

Platform service ID number	Enter 15 digit number found on the relevant Platform service listing 777369376063971
Call-Off Contract reference	709624451
Call-Off Contract title	Provision of a Mainframe Service – for PACS
Call-Off Contract description	Kyndryl's zCloud Managed Service provides a highly available mainframe Platform as a Service (PaaS) / z/OS, providing agile and scalable infrastructure in support of PACS
Start date	November 1 st 2023
Expiry date	October 31 st 2024
Call-Off Contract value	£1,145,188 GBP
Charging method	BACS, Monthly, through CP&F (Exostar)
Purchase order number	TBC

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

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

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

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

From the Buyer	Ministry of Defence
To the Supplier	Kyndryl UK Limited.
Together the 'Parties'	

Section 1.01 Principal contact details

For the Buyer:

CONTACT DETAILS REDACTED

For the Supplier:

CONTACT DETAILS REDACTED

Start date	This Call-Off Contract Starts on November 1st 2023 and is valid for 12 months .
Ending (termination)	<p>The notice period for the Supplier needed for Ending the Call-Off Contract is at least 90 Working Days from the date of written notice for undisputed sums (as per clause 18.6).</p> <p>The notice period for the Buyer is a maximum of 30 days from the date of written notice for Ending without cause (as per clause 18.1) subject to payment of Termination Charges as stated in Schedule 1 (Services).</p>
Extension period	See Section 7 in Schedule 1 (Services).

Section 1.02 Call-Off Contract term

G-Cloud Lot	<p>This Call-Off Contract is for the provision of Services Under:</p> <ul style="list-style-type: none"> Lot 3: Cloud support
G-Cloud Services required	<ul style="list-style-type: none"> The Services to be provided by the Supplier under the above Lot are set out in Schedule 1 (Services).
Additional Services	There are no additional Services to be provided under this Call-Off Contract
Location	<p>The Services will be delivered to:</p> <ul style="list-style-type: none"> ADDRESS REDACTED <p>The Services will be delivered from:</p> <ul style="list-style-type: none"> ADDRESS REDACTED
Quality Standards	There are no specific quality standards used as a requirement for this Call-Off Contract
Technical Standards:	There are no specific technical standards used as a requirement for this Call-Off Contract
Service level agreement:	The service level objectives required for this Call-Off Contract are as set out in Schedule 1 (Services)
Onboarding	The onboarding plan for this Call-Off Contract is described in Schedule 1 (Services) .

Buyer contractual details

<p>This Order is for the G-Cloud Services outlined below. It is acknowledged by the Parties that Collaboration agreement</p>	<p>Not applicable.</p>
<p>Limit on Parties' liability</p>	<p>Clause 24 of this Call Off contract and clause 28.2 of the G-Cloud 13 Framework Agreement (RM1557.13) are excluded and substituted with the following -for the avoidance of doubt, clauses 4.1 to 4.6 of the Framework Agreement remain applicable as stated in clause 2.1 of Part B (Terms and conditions).</p> <p>The annual total liability of either Party for all Property defaults (including technical infrastructure, assets or equipment but excluding any loss or damage to Buyer Data) will not exceed FIGURE REDACTED.</p> <p>The annual total liability for Buyer Data defaults resulting in direct loss, destruction, corruption, degradation or damage to any Buyer Data will not exceed FIGURE REDACTED% 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 £ FIGURE REDACTED of the Charges payable by the Buyer to the Supplier during the Call-Off Contract Term (whichever is the greater).</p>
<p>Insurance</p>	<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 £ FIGURE REDACTED for each individual claim or any higher limit the Buyer requires (and as required by Law) • employers' liability insurance with a minimum limit of FIGURE REDACTED or any higher minimum limit required by Law

Buyer's responsibilities	The Services to be provided by the Supplier under the above Lot are set out in Schedule 1 (Services)
Buyer's equipment	Not applicable

Section 1.03 Supplier's information

Subcontractors or partners	REDACTED
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Section 1.04 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 via MOD's Purchasing and Payment System CP&F. Payments are made to the Supplier by electronic BACS transfer or such other method as is agreed from time to time.
Payment profile	The payment profile for this Call-Off Contract is monthly.
Invoice details	See Schedule 1 (Services).
Who and where to send invoices to	Invoices will be processed through Exostar. If there are any issues they should be sent to Project Team named in DEFFORM 111.
Invoice information required	<p>All invoices must include:</p> <ul style="list-style-type: none">• The relevant Business Unit the services or goods were supplied to e.g., The MOD• Quote your Vendor Number• Quote Purchase Order Number• Use the units of measure, pricing units and description as stated in the Purchase Order• Be submitted in a timely manner after the despatch of goods or provision of services (and not accumulated). <p>Credit Notes</p> <p>Credit notes must quote the Invoice Number and Purchase Order Number that they relate to.</p> <p>Invoicing Queries</p> <p>For any queries regarding invoices the Buyer or Supplier must contact the other party using the contact details in DEFFORM 111.</p> <p>Please note that if an incorrect Purchase Order number or no Purchase Order number is quoted, the invoice will be returned to you. The PO will then be reissued to ensure any future invoices are referenced correctly.</p>
Invoice frequency	Invoice will be sent to the Buyer monthly.
Call-Off Contract value	The total value of this Call-Off Contract is £1,145,188 GBP.

Call-Off Contract charges	The breakdown of the Charges is shown in Schedule 1 (Services).
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Section 1.05 Additional Buyer terms

Performance of the Service	The performance metrics to be provided by the Supplier under the above Lot are set out in Schedule 1 (Services).
Guarantee	Not applicable.
Warranties, representations	Not applicable.
Supplemental requirements in addition to the Call-Off terms	Not applicable.
Alternative clauses	Not applicable.
Buyer specific amendments to/refinements of the Call-Off Contract terms	<p>Within the scope of the Call-Off Contract, the following provisions of Part B (Terms and conditions) will not apply:</p> <ul style="list-style-type: none"> • clause 1 (as confirmed by the “Start Date”, duration is for 24 months); • clause 14.2 • clauses 14.3 to 14.5 (PSN is not used); • clause 15 (Open Source Software is not used); • clause 16.2 (Anti-virus is not used in mainframe solutions and there is back level software in use) • clause 16.5 (Personal Data is already covered under Schedule 7. Recovery is to be provided within the capabilities of the MOD configuration stated in the SOW); • clause 16.6 (not System Development under the Service) • clause 17 (Guarantee) • clause 21 (Exit Plan as in the SOW); • clause 24 (Liability covered in the Order Form); • clause 31 (Not applicable); • Schedule 3 (Not applicable); • Schedule 4 (Not applicable); • Schedule 5 (Not applicable); • Annex 2 of Schedule 7 (Not applicable);

	<ul style="list-style-type: none"> • clause 28.2 of the G-Cloud 13 Framework Agreement (RM1557.13) <p>Alongside the G-Cloud 13 Terms and Conditions the below Ministry of Defence DEFCONS/DEFFORMS will also apply: DEFFORM 111 – Appendix - Addresses and Other Information (Annex A to Order form).</p>
Personal Data and Data Subjects	Annex 1 of Schedule 7 is being used
Intellectual Property	There are no Project Specific IPR's that may arise and require assignment or any other required amendments to standard IPR provisions under this Call-Off Contract.
Social Value	Not applicable.

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	REDACTED	REDACTED
Title	REDACTED	REDACTED
Signature	REDACTED	REDACTED
Date	31 Oct 2023	31 Oct 2023

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

Section 1.06 Customer Benefits

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

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

Article II. Part B: Terms and conditions

1. Call-Off Contract Start date and length

- 2.3 The Supplier must start providing the Services on the date specified in the Order Form.
- 2.4 This Call-Off Contract will expire on the Expiry Date in the Order Form. It will be for up to 36 months from the Start date unless Ended earlier under clause 18 or extended by the Buyer under clause 1.3.
- 2.5 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.
- 2.6 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.

3. Incorporation of terms

- 3.1 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

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

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

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

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

3.2.4 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.

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

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

4. Supply of services

- 4.1 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.
- 4.2 The Supplier undertakes that each G-Cloud Service will meet the Buyer's acceptance criteria, as defined in the Order Form.

5. Supplier staff

- 5.1 The Supplier Staff must:
 - 5.1.1 be appropriately experienced, qualified and trained to supply the Services
 - 5.1.2 apply all due skill, care and diligence in faithfully performing those duties
 - 5.1.3 obey all lawful instructions and reasonable directions of the Buyer and provide the Services to the reasonable satisfaction of the Buyer
 - 5.1.4 respond to any enquiries about the Services as soon as reasonably possible
 - 5.1.5 complete any necessary Supplier Staff vetting as specified by the Buyer
- 5.2 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.
- 5.3 The Supplier may substitute any Supplier Staff as long as they have the equivalent experience and qualifications to the substituted staff member.
- 5.4 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.
- 5.5 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.
- 5.6 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.

5.7 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.

5.8 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.

6. Due diligence

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

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

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

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

6.1.4 have entered into the Call-Off Contract relying on their own due diligence

7. Business continuity and disaster recovery

7.1 The Supplier will have a clear business continuity and disaster recovery plan in their Service Descriptions.

7.2 The Supplier's business continuity and disaster recovery services are part of the Services and will be performed by the Supplier when required.

7.3 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.

8. Payment, VAT and Call-Off Contract charges

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

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

8.3 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.

8.4 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.

- 8.5 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.
- 8.6 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.
- 8.7 All Charges payable by the Buyer to the Supplier will include VAT at the appropriate Rate.
- 8.8 The Supplier must add VAT to the Charges at the appropriate rate with visibility of the amount as a separate line item.
- 8.9 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.
- 8.10 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 invoices under the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.11 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.
- 8.12 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.

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

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

10. Insurance

- 10.1 The Supplier will maintain the insurances required by the Buyer including those in this clause.
- 10.2 The Supplier will ensure that:
- 10.2.1 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
 - 10.2.2 the third-party public and products liability insurance contains an 'indemnity to principals' clause for the Buyer's benefit
 - 10.2.3 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
 - 10.2.4 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
- 10.3 If requested by the Buyer, the Supplier will obtain additional insurance policies, or extend existing policies bought under the Framework Agreement.
- 10.4 If requested by the Buyer, the Supplier will provide the following to show compliance with this clause:
- 10.4.1 9.4.1 a broker's verification of insurance
 - 10.4.2 9.4.2 receipts for the insurance premium
 - 10.4.3 9.4.3 evidence of payment of the latest premiums due
- 10.5 Insurance will not relieve the Supplier of any liabilities under the Framework Agreement or this Call-Off Contract and the Supplier will:
- 10.5.1 take all risk control measures using Good Industry Practice, including the investigation and reports of claims to insurers
 - 10.5.2 promptly notify the insurers in writing of any relevant material fact under any Insurances
 - 10.5.3 hold all insurance policies and require any broker arranging the insurance to hold any insurance slips and other evidence of insurance
- 10.6 The Supplier will not do or omit to do anything, which would destroy or impair the legal validity of the insurance.

10.7 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.

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

10.8.1 premiums, which it will pay promptly

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

11. Confidentiality

11.1 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.

12. Intellectual Property Rights

12.1 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.

12.2 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.

12.3 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:

12.3.1 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

12.3.2 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.

12.4 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.

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

12.5.1 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

12.5.2 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.

12.6 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:

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

12.6.2 Supplier's performance of the Services

12.6.3 use by the Buyer of the Services

12.7 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:

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

12.7.2 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

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

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

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

12.8.2 other material provided by the Buyer necessary for the Services

- 12.9 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.

13. Protection of information

- 13.1 The Supplier must:

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

13.1.2 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

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

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

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

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

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

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

- 13.3 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.

14. Buyer data

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

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

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

- 14.4 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.

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

- 14.6 The Supplier will ensure that any Supplier system which holds any protectively marked Buyer Data or other government data will comply with:
- 14.6.1 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>
 - 14.6.2 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>
 - 14.6.3 National Cyber Security Centre's (NCSC) information risk management guidance:
<https://www.ncsc.gov.uk/collection/risk-management-collection>
 - 14.6.4 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>
 - 14.6.5 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>
 - 14.6.6 Buyer requirements in respect of AI ethical standards.
- 14.7 The Buyer will specify any security requirements for this project in the Order Form.
- 14.8 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.
- 14.9 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.
- 14.10 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.

15. Standards and quality

- 15.1 The Supplier will comply with any standards in this Call-Off Contract, the Order Form and the Framework Agreement.
- 15.2 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/guidance/the-technology-code-of-practice>
- 15.3 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.
- 15.4 If any PSN Services are Subcontracted by the Supplier, the Supplier must ensure that the services have the relevant PSN compliance certification.
- 15.5 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.

16. Open source

- 16.1 All software created for the Buyer must be suitable for publication as open source, unless otherwise agreed by the Buyer.
- 16.2 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.

17. Security

- 1.1 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. If requested, this will be at the Buyers expense.
- 17.1 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.
- 17.2 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.

17.3 Responsibility for costs will be at the:

17.3.1 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. This shall not apply when such Malicious Software has entered the system owing to limitations of unsupported software.

17.3.2 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.

17.4 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.

1.2 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>

17.5 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.

18. Guarantee

18.1 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:

18.1.1 an executed Guarantee in the form at Schedule 5

18.1.2 a certified copy of the passed resolution or board minutes of the guarantor approving the execution of the Guarantee

19. Ending the Call-Off Contract

19.1 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.

19.2 The Parties agree that the:

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

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

- 19.3 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.
- 19.4 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:
- 19.4.1 a Supplier Default and if the Supplier Default cannot, in the reasonable opinion of the Buyer, be remedied
 - 19.4.2 any fraud
- 19.5 A Party can End this Call-Off Contract at any time with immediate effect by written notice if:
- 19.5.1 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
 - 19.5.2 an Insolvency Event of the other Party happens
 - 19.5.3 the other Party ceases or threatens to cease to carry on the whole or any material part of its business
- 19.6 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.
- 19.7 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.

20. Consequences of suspension, ending and expiry

- 20.1 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.
- 20.2 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.
- 20.3 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.

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

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

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

20.4.3 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)

20.4.4 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.

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

20.5.1 return all Buyer Data including all copies of Buyer software, code and any other software licensed by the Buyer to the Supplier under it

20.5.2 return any materials created by the Supplier under this Call-Off Contract if the IPRs are owned by the Buyer

20.5.3 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

20.5.4 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

20.5.5 work with the Buyer on any ongoing work

20.5.6 return any sums prepaid for Services which have not been delivered to the Buyer, within 10 Working Days of the End or Expiry Date

20.6 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.

20.7 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.

21. Notices

21.1 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

21.2 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).

22. Exit plan

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

22.2 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.

22.3 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.

22.4 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.

- 22.5 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.
- 22.6 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:
- 22.6.1 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
 - 22.6.2 there will be no adverse impact on service continuity
 - 22.6.3 there is no vendor lock-in to the Supplier's Service at exit
 - 22.6.4 it enables the Buyer to meet its obligations under the Technology Code of Practice
- 22.7 If approval is obtained by the Buyer to extend the Term, then the Supplier will comply with its obligations in the additional exit plan.
- 22.8 The additional exit plan must set out full details of timescales, activities and roles and responsibilities of the Parties for:
- 22.8.1 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
 - 22.8.2 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
 - 22.8.3 the transfer of Project Specific IPR items and other Buyer customisations, configurations and databases to the Buyer or a replacement supplier
 - 22.8.4 the testing and assurance strategy for exported Buyer Data
 - 22.8.5 if relevant, TUPE-related activity to comply with the TUPE regulations
 - 22.8.6 any other activities and information which is reasonably required to ensure continuity of Service during the exit period and an orderly transition

23. Handover to replacement supplier

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

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

23.1.2 other information reasonably requested by the Buyer

23.2 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.

23.3 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.

24. Force majeure

24.1 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.

25. Liability

25.1 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).

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

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

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

25.3 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).

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

26. Premises

- 26.1 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.
- 26.2 The Supplier will use the Buyer's premises solely for the performance of its obligations under this Call-Off Contract.
- 26.3 The Supplier will vacate the Buyer's premises when the Call-Off Contract Ends or expires.
- 26.4 This clause does not create a tenancy or exclusive right of occupation.
- 26.5 While on the Buyer's premises, the Supplier will:
- 26.5.1 comply with any security requirements at the premises and not do anything to weaken the security of the premises
 - 26.5.2 comply with Buyer requirements for the conduct of personnel
 - 26.5.3 comply with any health and safety measures implemented by the Buyer
 - 26.5.4 immediately notify the Buyer of any incident on the premises that causes any damage to Property which could cause personal injury
- 26.6 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.

27. Equipment

- 27.1 The Supplier is responsible for providing any Equipment which the Supplier requires to provide the Services.
- 27.2 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.
- 27.3 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.

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

- 28.1 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.

29. Environmental requirements

- 29.1 The Buyer will provide a copy of its environmental policy to the Supplier on request, which the Supplier will comply with.
- 29.2 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.

30. The Employment Regulations (TUPE)

- 30.1 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.
- 1.3 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:
 - 30.1.1 the activities they perform
 - 30.1.2 age
 - 30.1.3 start date
 - 30.1.4 place of work
 - 30.1.5 notice period
 - 30.1.6 redundancy payment entitlement
 - 30.1.7 salary, benefits and pension entitlements
 - 30.1.8 employment status
 - 30.1.9 identity of employer
 - 30.1.10 working arrangements
 - 30.1.11 outstanding liabilities
 - 30.1.12 sickness absence
 - 30.1.13 copies of all relevant employment contracts and related documents

30.1.14 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.

- 30.2 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.
- 30.3 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.
- 30.4 The Supplier will indemnify the Buyer or any Replacement Supplier for all Loss arising from both:
- 30.4.1 its failure to comply with the provisions of this clause
 - 30.4.2 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
- 30.5 The provisions of this clause apply during the Term of this Call-Off Contract and indefinitely after it Ends or expires.
- 30.6 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.

31. Additional G-Cloud services

- 31.1 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.
- 31.2 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.

32. Collaboration

- 32.1 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.

- 32.2 In addition to any obligations under the Collaboration Agreement, the Supplier must:
- 32.2.1 work proactively and in good faith with each of the Buyer's contractors
 - 32.2.2 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

33. Variation process

- 33.1 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.
- 33.2 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.
- 33.3 If Either Party can't agree to or provide the Variation, the Buyer may agree to continue performing its obligations under this Call-Off Contract without the Variation, or End this Call-Off Contract by giving 30 days notice to the Supplier.

34. Data Protection Legislation (GDPR)

- 34.1 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.

Article III. Schedule 1: Services

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

Statement of Work (SoW) for Operational Managed Services (zCloud Service)

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Definitions

Additional Resource Charges (ARC's) and Reduced Resource Charges (RRC's) Unit Pricing means – the Charges associated with the Additional Resource Charges (ARC's) and Reduced Resource Charges (RRC's) Unit Pricing table as set out in Appendix B.

Assigned Resource Units means - the number of Resource Units assigned to the MOD.

Base Component means - the zCloud hardware and software that Kyndryl makes available including those specified in Appendix A, (zCloud Base Components).

Base Services are the Services as per section 5: "Mainframe Managed Services" definition below

Call is a telephone call that is answered by the Front Desk for problems and change requests and for system administration requests.

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

DASD means - Direct access storage device or disk storage.

Delivery Location is an Kyndryl facility from where Kyndryl provides the Services for the MOD.

Focal Point is the person, designated by the MOD, who has the authority to act for and on the MOD behalf in all aspects of this SoW, who acts as the primary interface with the services coordinator, and to whom Kyndryl will address all communications related to the Services.

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

Gigabytes or GB means - 1,000,000,000 bytes of data.

Global Mirror means - a type of disk storage used as part of the Kyndryl Disaster Recovery service.

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

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

Hard Capped LPAR means - an LPAR which has a Hard Cap set.

Help Desk means – the currently owned and operated MOD/DWP TechNow based Help Desk. The MOD will provide Kyndryl access to the Help Desk system as a resolver group.

MOD Configuration means - the hardware machines (the "Hardware") and software (the "Software") configuration on which Kyndryl will deliver the Services to the MOD.

MOD Component means - software that MOD provides including those specified in Appendix A-2, (The MOD provided ISV Software to be licensed by the MOD).

Kyndryl Data Centre means - a building owned, leased, or rented by Kyndryl, located at Kyndryl United Kingdom Limited, REDACTED and used by Kyndryl to house Kyndryl Internal and/or Kyndryl Client information technology services and systems.

ISV means - the Independent Software Vendor's software products which are licensed for use by the MOD within their assigned LPAR(s).

Key Users means - the individuals the MOD will assign as primary contacts to Kyndryl with respect to problem determination, and who are familiar with the MOD's applications and operations and also familiar with skill areas including printer operations, physical connections to servers, printers and workstations and the MOD network environment and operations (e.g. LAN, WAN).

Landing Zone – means the zCloud machine within the zCloud Complex, which is for hosting clients' systems migrating to zCloud which do not initially meet the zCloud Service Criteria for software currency as defined in the zCloud Service Plan. In certain circumstances the MOD may continue to run their systems on the Landing Zone when Kyndryl agrees.

Large System Performance Reference (LSPR) means - the set of relative performance indicators for System z published by Kyndryl.

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

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

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

N(n) - 1 means where N(n) is the current instance of whatever is being discussed (Software version, hardware generation, system configuration) N(n) -1 is therefore the previous instance.

Operational Documentation means – the documentation Kyndryl provides to the MOD, which includes, but is not limited to, the processes and procedures for incident

management, problem management, change management, systems recovery and security related to the performance of the Services.

Patch means - a software fix and is synonymous with "Program Temporary Fix.

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

Primary Server means - the Server within the zCloud Complex which has been assigned to host a the MOD LPAR(s) during normal operation.

Primary Site means - the Kyndryl Data Centre hosting the MOD Primary Server.

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

Resource Unit or RU means - units of resource for which Kyndryl and the MOD have established a zCloud Contractual Baseline.

Security Checked (SC) means – the government term as per security vetting as is defined on the gov.uk website.

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

Secondary Site means - an Kyndryl Data Centre that is geographically separate from the Primary Site from which zCloud services may also be provided.

Server means - the physical processor and processor components that are in the zCloud Complex.

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

Service(s) means – the Kyndryl provided service or services set out in this SoW.

Service Level Objective(s) means – the target(s) for the Kyndryl delivery standards.

Severity 1 means – the categorisation of incidents or problems typically involving a 'system down' or a probable 'system down' if not acted upon promptly.

Short Term Resource Flex Up Rate means - the MIPS percentage specified in Appendix B for short term increases to MIPS.

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

Soft Capped LPAR means - an LPAR which has a Soft Cap set.

Software means – the applications software and Systems Software, collectively.

Standard Disk means - a type of disk in which data will reside in a storage sub-system connected to the zCloud with no mirroring.

Standard LPAR means - an LPAR that is hosted on a single Server within the zCloud Complex.

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

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

System Software means – the programs, including all source code (if applicable), supporting documentation and media that: perform tasks basic to the functioning of data processing and telecommunication; and are required to operate the applications software

Time Extended Failover Period means – that period of time between (a) the time a Failover is initiated in advance of a zCloud Server Outage and (b) the time services are restarted on the Standard LPAR on the Primary Server upon completion of the zCloud Server Outage, or as agreed to by Kyndryl.

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

zCloud means – means the Managed Extended Cloud IaaS service where Kyndryl provides the hardware, software and management processes upon which the MOD mainframe LPARs will operate.

zCloud Baseline Charges means – the charges associated with the zCloud Contractual Baseline charges as set out in Appendix B.

zCloud Complex means – the mainframe Servers and the associated hardware and software, which are used to host the MOD's mainframe LPARs within the zCloud. The zCloud Complex includes, but is not limited to the mainframe Servers, FICON Directors, OSA network cards, storage hardware, zCloud Software Products and tape controllers

zCloud Contractual Baseline means – the quantity of zCloud Resource Units assigned to the MOD utilized for calculating charges as set forth in Appendix B (zCloud Contractual Baselines).

zCloud Custom Software means – the Kyndryl or ISV software products which are licensed as the MOD-specific for use by the MOD for operation within its assigned LPARs.

zCloud DFSMS Data Collection Facility ("DCOLLECT") means – the tool used by Kyndryl to measure disk space allocated to the MOD.

zCloud Disk Storage Service Type means – the type of disk storage available to the MOD described in Section 2.3 of this SOW.

zCloud Hardware Levels means – the provided hardware levels of the Base Components as published in the zCloud Service Plan, see Section 2.6 of this SOW.

zCloud Maintenance Schedule means – the schedule of zCloud Maintenance Window.

zCloud Maintenance Window means – the period(s) of time and date(s) upon which one or more Servers in the zCloud Complex will undergo hardware maintenance which may result in zCloud Service Outages for the MOD standard LPAR(s) and require the the MOD Hot Standby and High Availability LPAR(s) residing on such Server(s) to go into Failover.

zCloud Server Outage means – that period of time being the duration of a planned zCloud Maintenance Window or an unscheduled failure of a Server within the zCloud Complex hosting any MOD LPAR.

zCloud Service Criteria means – those service criteria which must be continuously met in order for the MOD's systems to be eligible to reside on a zCloud Complex, as more fully described in the zCloud Service Plan.

zCloud Service Hours means – the hours of normal operations as defined in the zCloud Service Plan.

zCloud Service Plan means – the document defined in Section 2.6 of this Schedule.

zCloud Service Type means – the zCloud LPAR Service, zCloud Disk Storage Service and zCloud Tape Service as described in this Schedule.

zCloud Software Levels means – the permitted software levels of the zCloud Software Products as published in the zCloud Service Plan described in Section 2.6.

zCloud Software Product means – a software product centrally licensed as part of the zCloud service for which Kyndryl defines a currency level (version, release and modification) to which the MOD LPARs hosted on the zCloud service must be maintained.

zCloud Software Stack means – the software bundles provided by zCloud. The elements of the software stack to be provided to the MOD for this contract are noted in Appendix A.

zCloud Storage Outage means – the duration of a planned zCloud Maintenance Window or an unscheduled failure of a storage device within the zCloud Complex holding the data for any MOD LPAR.

zCloud Tape Service Type means – the type of tape services described in Section 2.4 of this Schedule.

General Services

Introduction

This SOW describes the services responsibilities of Kyndryl and the MOD with respect to use of the Kyndryl zCloud service described below.

The SOW is subject to the G-Cloud 13 Call-Off Terms. In case of any conflict between the G-Cloud 13 Call-Off Terms and the SOW, then the SOW terms will apply.

Scope - zCloud LPAR Service Types

Kyndryl will provide the zCloud services to the MOD for the contractual baselines and charges as set forth in Appendix B.

Changes in the zCloud Service Type assigned to the MOD will be handled in accordance with the G Cloud 13 Call-Off Contract Variation process.

Each MOD LPAR will be assigned to a specific named Server within the zCloud Complex (the "Primary Server"). Kyndryl reserves the right to change the Primary Server in accordance with the G Cloud 13 Call-Off Contract Variation process.

The following zCloud Service Types are available to the MOD in zCloud, only those selected by the MOD and included in Appendix B, will be charged as part of the service.

Standard LPAR

A Standard LPAR is the zCloud Service Type in which the MOD workload is hosted on a single Server within the zCloud Complex for which there is no Alternate Server to run the workload during a zCloud Server Outage.

In the event of a zCloud Server Outage on the Server hosting a MOD Standard LPAR that LPAR will be unavailable until the event has completed

Disaster Recovery (DR) LPAR

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

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

The LPARs on the Primary and Alternate Servers will not be concurrently activated.

(*) The Disaster Recovery service is based upon a "cold start" of a dedicated Disaster Recovery LPAR at the DR site. Data on the local disk at the DR site is populated with replicated data from the production site via IBM Global Mirror. Data on the local VTS at the DR site is populated with replicated data from the production site via VTS grid replication.

Scope - zCloud Storage Service Types

Kyndryl will provide zCloud Disk Storage Services to the MOD as set forth in Appendix B.

Changes in the zCloud Disk Storage Service type assigned to the MOD will be handled in accordance with the Change Management Process.

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Scope - zCloud Tape Service Types

Kyndryl will provide zCloud tape Services to the MOD as per the zCloud Contractual Baselines set forth in Appendix B, (zCloud Contractual Baselines). Changes to the zCloud Tape Service Type will be handled in accordance with the change management process. The following zCloud Tape Service Types are available to the MOD.

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Scope – Network Services

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zCloud Service Plan

REDACTED (SOLUTION)

zCloud Service Tasks

REDACTED (SOLUTION)

Ongoing Services and Support Responsibilities

zCloud Capacity Management

REDACTED (SOLUTION)

zCloud Server Maintenance and Outages

REDACTED (SOLUTION)

zCloud Resource Units (RU)

REDACTED (SOLUTION)

Conversion of MSU to MIPS

REDACTED (SOLUTION)

zCloud LPAR Definitions and Capping Options

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Mainframe Managed Services

Kyndryl Mainframe Managed Services (hereinafter the “MMS”) consists of Kyndryl's provision of managed services with respect to Kyndryl zCloud to the MOD. The MMS include but are not limited to Kyndryl providing monitoring and system administration related support services to mainframe equipment. The equipment (the MOD Configuration), the object of the MMS, is defined in Appendices A-C in this document. The services are provided on the following operating system platforms: z/OS and associated subsystems, CICS, DB2 as well as the mainframe network and mainframe storage devices. The preparation, scheduling, running, support, maintenance and fixing of batch jobs and batch operations will be the responsibility of the MOD; Kyndryl will provide support for the infrastructure related to batch operations.

Provision of these services requires the current the MOD SMP/E environment to be installed on the zCloud Complex, along with any installation libraries for both Kyndryl and ISV software.

Any applications currently supported by the MOD or any other third-party are out of Kyndryl scope and remain the MOD's responsibility, including application support, fixes, or changes.

Kyndryl Services Description

Service Management

Kyndryl will designate a service manager, who will coordinate any Services modifications, incident and problem resolution and conditions of Services updates. The service manager will also review the Service Report with the MOD.

Systems Operations

Kyndryl will use its skills in accordance with proven Kyndryl practices to provide system operations support in response to incidents and problems they have identified, or requests notified to our service desk by the MOD, the MOD Key Users, their backup personnel, the MOD Helpdesk or via system monitoring.

Systems Administration

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

Technical Support

Kyndryl will use its skills in accordance with proven Kyndryl practices to provide technical support. The Kyndryl technical support staff will provide support to the MOD operations running on the zCloud Complex in response to problems they have identified and/or requests notified to our service manager. This will include but is not limited to the following.

- a. Apply planned maintenance in alternate years, dependent upon maintenance availability for back-level or out of vendor support software.
- b. Apply preventive maintenance to Kyndryl and ISV mainframe software as required and agreed between the MOD and Kyndryl, dependent upon maintenance availability for back-level or out of vendor support software.
- c. Apply maintenance to correct outstanding problems in supported products, as defined in Appendix A, software product list.
- d. Install, setup, and where jointly agreed, test and implement ISV products driven either by need to correct problems or stay current.
- e. Install, setup, test and implement ISV products driven either by need to correct problems or stay current.
- f. Management of system & software configurations (via the Variation process).
- g. Manage system & software configurations (via the Variation process).
- h. Manage mainframe disk space usage.
- i. Monitor and maintain the catalogue environment.
- j. Provide input to the planning of Disaster Recovery tests when required.
- k. Support annual Disaster Recovery tests.
- l. Action all work in accordance with security standards.
- m. Tune systems/software to improve performance.
- n. Manage operating systems IPL procedures.
- o. Investigate performance problems and where specific problems are diagnosed, undertake corrective action within Kyndryl's remit.
- p. Support the system software, database and middleware products that are installed as defined in Appendix A software List of this SoW. Support for any subsequent software installation will be subject to the RFS process.
- q. Plan and support mainframe related hardware installations and upgrades.
- r. Maintain the mainframe automation environment.
- s. Maintain the mainframe network configuration.

Backup Management Service

This Service provides the management of the backup solution for the MOD configuration.

Operating System Patch Administration Service

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

Database Administration Service

This Service provides monitoring, technical support, and database administration for the MOD's database environment, installed on the LPARs detailed in the MOD Configuration.

Service Hours

Kyndryl will provide each of the Services during the Service Hours specified in the following table.

Services	Support Availability	Notes
Technical support teams	24/7 x 365	P1, After Service Hours support is via callout. Contact number and procedure to be documented by Kyndryl.
Technical support teams with Service Management	Service Hours Monday – Friday 08:00 – 20:00	
Disaster Recovery Services	24/7 x 365	Invocation when agreed

Service Level Objectives (SLO's)

The SLO's and availability criteria required for this SOW is:

- **Platform Availability:** 99.9% availability (excluding agreed maintenance periods) for the following components:
 - Kyndryl Production data centre (it includes facilities, zCloud and any associated data centre connectivity infrastructure)
 - Kyndryl Production LPAR server and storage hardware
 - Kyndryl Production LPAR operating system and database software

Operating hours for the measured systems will be Monday to Sunday, 00.00-23:59, excluding maintenance windows.

Availability measurement will exclude outages due to failures arising from software which is out of support.

Disaster Recovery RTO <4 Hours, RPO <1 Minute.

Incident Management:

Incident management SLO's, from time of receipt by Kyndryl, are as follows:

Service Hours: Monday – Friday 08:00 – 20:00

Service Level Objectives	1st Report	Report Frequency	Resolution
SLO 1	<= 30 minutes	60 minutes	98% within 6 Business Hours*
SLO 2	<= 2 hours	4 hours	98% within 24 Business Hours
SLO 3	<= 1 day	7 days	98% within 3 Business Days
SLO 4	<= 4 days	On Resolution	98% within 7 Business Days

(1st Report means the period within which Kyndryl provided an initial status report after the creation of the incident in the Kyndryl incident management system), (Report Frequency means the subsequent update period).

* For a Severity Level 1 incident out of Business Hours Kyndryl will advise the MOD on procedures to raise a support call

For the purpose of SLO measurement Business hours are defined as 9am – 5pm and Business Days are defined as Monday – Friday.

Service Level reporting shall be by month.

Deliverables and Tools

Kyndryl will provide the MOD with the following deliverables as part of the Services:

Service Deliverables

These deliverables are applicable to the Services:

Operational Documentation

This documentation will include but not be limited to:

- a) The MOD configurations for which the Services are provided.
- b) Contact names and phone numbers.
- c) The MOD recovery procedures for backup only.
- d) Operational standards.
- e) Incident, problem, and change management procedures; and
- f) Network access and act on behalf of the MOD authorisation letters.

Service Report

The Kyndryl service manager will produce a monthly Service Report for the MOD Service account manager. This report will detail the services utilisation since the start of the Services or the last Service Report whichever is most recent. Such detail will include but not be limited to:

- a) Incident summary report.
- b) Planned system changes.
- c) Amendments agreed under the Variation process to the Operational Documentation such as:
 - I. The MOD configurations for which the Services are provided.
 - II. Contact names and phone numbers.
 - III. The MOD recovery procedures for backup only.
 - IV. Operational standards.
 - V. Incident problem and change management procedures; and
 - VI. Network access and "act on behalf of the MOD" authorisation letters.
- d) Kyndryl standard performance and capacity reports covering: CPU usage, memory usage and disk space utilisation.

Incident Management Process

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Security

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Software Required Consents and Indemnity

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

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

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

Any standard programs Kyndryl uses in providing the Services to the MOD, (subject to the MOD's agreement that such programs are required), for which Kyndryl is not the licensee (except for licenses procured from Kyndryl by the MOD, which Kyndryl shall agree to access and use them for the Services) the MOD agree to:

- a) Obtain the right (as of the Start Date) for Kyndryl to access and use them, and
- b) Be responsible for procuring new versions and releases for such standard programs, as described below.

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

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

- c) Is prevented from taking advantage of technological advancements in the industry; or
- d) Incurs additional costs (for example, multiple version charges). In such case, the requesting party will either update the programs or reimburse the other party for any increased costs.

Additional Extensions

Kyndryl cannot commit to extend beyond the initial 12 month term of this agreement, which ends on October 31st 2024, because the zCloud mainframe system used will be decommissioned.

This is also due to the MOD LPAR running end of support system software that cannot be upgraded owing to the incompatibility of the MODs application. As the next generation of zCloud Mainframes that Kyndryl will implement will not support this software.

A regularly monthly service meeting between Kyndryl's Delivery Partner and the MOD, will monitor the progress of the MOD's exit from the Service.

Exit

As defined in Part B: Terms and conditions of the accompanying G-Cloud 13 Call-Off Contract

Exit Management

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

Exit Management Charges

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

Exit Plan and Procedures (Documentation)

The Exit Plan shall:

- a) detail how the Services will transfer to the new service provider and/or the MOD;
- b) specify any reasonable charges that would be payable for the provision of exit management services;
- c) provide a timetable and identify critical issues; and
- d) set out the management structure.

In addition, within 30 days after service of a termination notice by either party or six months prior to the expiration of this agreement, the parties shall update the Exit Plan

into a final form. The parties shall meet and use their respective reasonable endeavours to agree the contents of such Exit Plan.

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

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

Kyndryl shall make available to the MOD any Machines, Programs, Project Materials that are the property of and/or licensed to the MOD. Kyndryl shall have the right to make reasonable charges should Kyndryl incur associated costs for this potential transfer.

Appendix A: zCloud Base Components

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A - 1: The MOD Software to be licensed by Kyndryl

Version numbers (when provided below) are based upon the current inventory of IBM software running Mainframe and may be superseded if the MOD makes an upgrade to any of this software.

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A - 2: The MOD ISV Software to be licensed by the MOD

It is the MOD's responsibility to appropriately license ALL other required ISV products that are deemed to be required by the MOD.

Appendix B: zCloud Contractual Baselines and Charges

REDACTED (SOLUTION & PRICING)

Invoicing

The following shall apply:

- a) At the beginning of each calendar month, Kyndryl will issue an invoice for the z/OS Cloud Charges as per the table above, zCloud Baseline Charges, that will include the following items as appropriate:
 - I. Kyndryl charges for the zCloud Contractual Baselines as set out in Appendix B-5 zCloud Charges table above.
 - II. Any Additional Resource Charges (ARC) or Reduced Resource Credits (RRC) from the prior month using the ARC's/RRC's resource units as outlined below in the Additional Resource Charges (ARC's) and Reduced Resource Charges (RRC's) Unit Pricing table.
 - III. Any additional charges incurred as a result of the assignment of additional resources in accordance with B-4, Short Term Resource Flex Up, in the prior month. The charge shall be the daily Short Term Resource Flex Up Rate per MIPS times the daily short term flex up MIPS resources assigned via the change management process.
 - IV. Other additional charges as incurred; and
 - V. Any applicable taxes.
- b) Invoices will be issued on the last working day before the 15th of each month.
- c) Payment will be due 45 calendar days after the receipt of the invoice.
- d) As per the G Cloud 13 Call-Off Contract, if the MOD ends this Call-Off Contract, it will indemnify Kyndryl against any commitments, liabilities or expenditure which result in any unavoidable Loss by Kyndryl.
- e) Payment for Kyndryl's Services will be made by electronic transfer and prior to submitting any claims for payment under clause (e) Kyndryl will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool via the current supported CP&F gateway.
- f) Where Kyndryl submits an invoice to the MOD in accordance with clause (d), the MOD will consider and verify that invoice in a timely fashion.
- g) The MOD shall pay Kyndryl any sums due under such an invoice no later than a period of 45 days from the date on which the MOD has determined that the invoice is valid and undisputed.
- h) Where the MOD fails to comply with clause (e) and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause (f) after a reasonable time has passed.

- i) The approval for payment of a valid and undisputed claim for payment by the MOD shall not be construed as acceptance by the MOD of the performance of Kyndryl's obligations nor as a waiver of its rights and remedies under this Contract.
- j) Without prejudice to any other right or remedy, the MOD reserves the right to set off any amount owing at any time from Kyndryl to the MOD against any amount payable by the MOD to Kyndryl under the Contract or under any other contract with the MOD, or with any other Government Department.

Additional Resource Charges (ARC's) and Reduced Resource Charges (RRC's)
Unit Pricing

The table below outlines the ARC's and RRC's applicable to the hardware resources provided within the z-Cloud Services SoW.

TABLE REDACTED

Termination Charges

The following Table details these costs for a given termination month.

TABLE REDACTED

Appendix C: Security for zCloud Services

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Appendix D: Managed Extended Cloud IaaS for Networking

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Article IV. 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:

Call-Off Contract Charges included in Schedule 1 (Services).

Article V. Schedule 3: Collaboration agreement – Not Used

Article VI. Schedule 4: Alternative clauses – Not Used

DEFFORM111 – Appendix – Addresses and Other Information

REDACTED

Article VII. Schedule 5: Guarantee Not Used

Article VIII. 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.

Expression	Meaning
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.

Expression	Meaning
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.

Expression	Meaning
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-for-tax
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

Expression	Meaning
	<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	<p>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</p>
Freedom of Information Act or FoIA	<p>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.</p>
G-Cloud Services	<p>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.</p>
UK GDPR	<p>The retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679).</p>

Expression	Meaning
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	Contractual engagements which would be determined to be within the scope of the IR35 Intermediaries legislation if assessed using the ESI tool.
Insolvency event	Can be: <ul style="list-style-type: none"> • a voluntary arrangement • a winding-up petition • the appointment of a receiver or administrator • an unresolved statutory demand • a Schedule A1 moratorium • a Dun & Bradstreet rating of 10 or less

Expression	Meaning
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.

Expression	Meaning
Loss	All losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and 'Losses' will be interpreted accordingly.
Lot	Any of the 3 Lots specified in the ITT and Lots will be construed accordingly.
Malicious Software	Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
Management Charge	The sum paid by the Supplier to CCS being an amount of up to 1% but currently set at 0.75% of all Charges for the Services invoiced to Buyers (net of VAT) in each month throughout the duration of the Framework Agreement and thereafter, until the expiry or End of any Call-Off Contract.
Management Information	The management information specified in Framework Agreement Schedule 6.
Material Breach	Those breaches which have been expressly set out as a Material Breach and any other single serious breach or persistent failure to perform as required under this Call-Off Contract.
Ministry of Justice Code	The Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000.
New Fair Deal	The revised Fair Deal position in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 as amended.
Order	An order for G-Cloud Services placed by a contracting body with the Supplier in accordance with the ordering processes.
Order Form	The order form set out in Part A of the Call-Off Contract to be used by a Buyer to order G-Cloud Services.

Expression	Meaning
Ordered G-Cloud Services	G-Cloud Services which are the subject of an order by the Buyer.
Outside IR35	Contractual engagements which would be determined to not be within the scope of the IR35 intermediaries legislation if assessed using the ESI tool.
Party	The Buyer or the Supplier and 'Parties' will be interpreted accordingly.
Personal Data	Takes the meaning given in the UK GDPR.
Personal Data Breach	Takes the meaning given in the UK GDPR.
Platform	The government marketplace where Services are available for Buyers to buy.
Processing	Takes the meaning given in the UK GDPR.
Processor	Takes the meaning given in the UK GDPR.
Prohibited act	<p>To directly or indirectly offer, promise or give any person working for or engaged by a Buyer or CCS a financial or other advantage to:</p> <ul style="list-style-type: none"> • induce that person to perform improperly a relevant function or activity • reward that person for improper performance of a relevant function or activity • commit any offence: <ul style="list-style-type: none"> – under the Bribery Act 2010 – under legislation creating offences concerning Fraud – at common Law concerning Fraud – committing or attempting or conspiring to commit Fraud
Project Specific IPRs	Any intellectual property rights in items created or arising out of the performance by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call-Off Contract including databases, configurations, code, instructions, technical documentation and schema but not including the Supplier's Background IPRs.
Property	Assets and property including technical infrastructure, IPRs and equipment.

Expression	Meaning
Protective Measures	Appropriate technical and organisational measures which may include: pseudonymisation and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.
PSN or Public Services Network	The Public Services Network (PSN) is the government's high performance network which helps public sector organisations work together, reduce duplication and share resources.
Regulatory body or bodies	Government departments and other bodies which, whether under statute, codes of practice or otherwise, are entitled to investigate or influence the matters dealt with in this Call-Off Contract.
Relevant person	Any employee, agent, servant, or representative of the Buyer, any other public body or person employed by or on behalf of the Buyer, or any other public body.
Relevant Transfer	A transfer of employment to which the employment regulations applies.
Replacement Services	Any services which are the same as or substantially similar to any of the Services and which the Buyer receives in substitution for any of the services after the expiry or Ending or partial Ending of the Call-Off Contract, whether those services are provided by the Buyer or a third party.
Replacement supplier	Any third-party service provider of replacement services appointed by the Buyer (or where the Buyer is providing replacement Services for its own account, the Buyer).
Security management plan	The Supplier's security management plan developed by the Supplier in accordance with clause 16.1.
Services	The services ordered by the Buyer as set out in the Order Form.
Service data	Data that is owned or managed by the Buyer and used for the G-Cloud Services, including backup data.

Expression	Meaning
Service definition(s)	The definition of the Supplier's G-Cloud Services provided as part of their Application that includes, but isn't limited to, those items listed in Clause 2 (Services) of the Framework Agreement.
Service description	The description of the Supplier service offering as published on the Platform.
Service Personal Data	The Personal Data supplied by a Buyer to the Supplier in the course of the use of the G-Cloud Services for purposes of or in connection with this Call-Off Contract.
Spend controls	The approval process used by a central government Buyer if it needs to spend money on certain digital or technology services, see https://www.gov.uk/service-manual/agile-delivery/spend-controls/should-you-need-approval-to-spend-money-on-a-service
Start date	The Start date of this Call-Off Contract as set out in the Order Form.
Subcontract	Any contract or agreement or proposed agreement between the Supplier and a subcontractor in which the subcontractor agrees to provide to the Supplier the G-Cloud Services or any part thereof or facilities or goods and services necessary for the provision of the G-Cloud Services or any part thereof.
Subcontractor	Any third party engaged by the Supplier under a subcontract (permitted under the Framework Agreement and the Call-Off Contract) and its servants or agents in connection with the provision of G-Cloud Services.
Subprocessor	Any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract.
Supplier	The person, firm or company identified in the Order Form.
Supplier Representative	The representative appointed by the Supplier from time to time in relation to the Call-Off Contract.
Supplier staff	All persons employed by the Supplier together with the Supplier's servants, agents, suppliers and subcontractors used in the performance of its obligations under this Call-Off Contract.

Expression	Meaning
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.

Article IX. 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.

Article X. 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: REDACTED
- 1.2 The contact details of the Supplier's Data Protection Officer are: REDACTED
- 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	<p>The 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>

Section 10.01 Data Processing Addendum Exhibit

This Data Processing Addendum Exhibit (DPA Exhibit) specifies the DPA for the identified Service.

1. Processing

Kyndryl will process Buyer Personal Data for the Service, as described in the Agreement, including the DPA at <https://www.kyndryl.com/terms/dpa> and this DPA Exhibit.

The DPA applies to Personal Data contained in the Content, if and to the extent: i) the European General Data Protection Regulation (EU/2016/679); or ii) other data protection laws identified at <https://www.kyndryl.com/terms/dpl> apply.

"Content" consists of all data, software and information that Buyer or its authorized users provide(s), authorize(s) access to, or input(s) into the identified Service.

1.1. Duration of Processing

Duration of Processing corresponds to the duration of the Services. Kyndryl will retain Buyer Personal Data as part of system backup for a period of 1 year (Retention Period).

1.2. Nature of Processing

The nature of Processing consists of the following Kyndryl Processing Activities based on the Buyer's instructions:

- Monitoring – Applications, networks, systems, or infrastructure logging or monitoring
- Operations – Provision, maintenance, or management (including security management) of applications, networks, systems, or infrastructure
- Hosting – Storage or other computing resources
- Backup – Back-up, archiving, or disaster recovery (Execution only)
- Caching – Online processing or manipulation of data without persistent storage

2. Buyers Personal Data

The following lists the Categories of Data Subjects whose Personal Data generally could be processed within the Service:

- Buyer's employees (including temporary or casual workers, volunteers, assignees, trainees, retirees, pre-hires and applicants)
- Buyer's affiliates employees (including temporary or casual workers, volunteers, assignees, trainees, retirees, pre-hires and applicants)
- Buyer's (potential) customers (if those (potential) customers are individuals)
- Employees of Buyer's (potential) customers
- Buyer's business partners (if those business partners are individuals)
- Employees of Buyer's business partners
- Buyer's suppliers and subcontractors (if those suppliers and subcontractors are individuals)
- Employees of Buyer's suppliers and subcontractors
- Buyer's agents, consultants and other professional experts (contractors)

Types of Personal Data and Special Categories of Personal Data

The following lists are the Types of Buyer Personal Data that generally could be processed within the Service:

Types of Personal Data

Capabilities and Qualifications of the Individual

- Education and Professional Certifications
- Profession and Employment Information
- Professional Affiliations

Characteristics of the Individual

- Demographic
- Economic and Financial
- Nationality and Citizenship
- Consumed Resources

Identity of the Individual

- Government Identities
- Identification Number
- Individual
- Online Access and Authentication Credentials
- Online Connection and Network Connectivity Data
- Online Identifier
- Person Name
- Technology Identifiers

Location of the Individual

- Appointments, Schedules, Calendar Entries
- Environment of the Individual
- Physical Location of the Individual
- Special Categories of Personal Data

The following lists the Special Categories of Personal Data that generally could be processed within the Service:

None.

General

The above lists, in this Section 2, are information about the Categories of Data Subjects, the Types of Buyer Personal Data, and Special Categories of Personal Data that generally can be processed within the Service. Kyndryl will process the Types of Buyer Personal Data and Special Categories of Personal Data of the identified Categories of Data Subjects listed above in accordance with the Agreement. Given the nature of the Services, Buyer acknowledges that Kyndryl is not able to verify or maintain the above lists, therefore, Buyer will notify Kyndryl of any required changes by sending an e-mail to: REDACTED . If changes to the above lists require changes of the agreed Processing, Buyer shall provide Additional Instructions to Kyndryl as set out in the DPA

3. Technical and Organizational Measures

The technical and organizational measures (TOMs) applicable to the Service are available at <https://www.kyndryl.com/terms/dsp>. These TOMs as set out above are applicable to all Content, including Buyer Personal Data.

Buyer confirms its obligation to implement appropriate TOMs within its own area of responsibility, including maintaining appropriate security for any system or replacement which remains or is otherwise under the Buyer's control (operational or architectural).

4. Audit

Intentionally left blank

5. Deletion and return of Buyer Personal Data

Buyer will be able to delete and/or make a copy of Buyer Personal Data until the expiration or termination of the Service. Kyndryl will delete all Buyer Personal Data at the end of the Service.

6. Subprocessors

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

1. Kyndryl companies established in an adequate country:

Name of Subprocessor	Country Located *
None	None

2. Third Party Subprocessors established in an adequate country:

REDACTED

3. Kyndryl Data Importers (Kyndryl companies established in a Non-Adequate Country):

Name of Kyndryl Data Importer	Address of Kyndryl Data Importer **
None	

4. Third Party Data Importer (non Kyndryl companies established in a Non-Adequate Country):

Name of Third Party Data Importer	Country located **
None	

7. Transborder Data Processing

Not required.

8. Data Protection Officer and Other Controllers

Buyer is responsible for providing complete, accurate and up-to-date information about its Data Protection Officer, and EU Representative if applicable, and each other Controllers (including their Data Protection Officer and EU Representative, if applicable), if any, as per agreed contract change process.

Buyer shall provide any updates to the above list as per agreed contract change process in the Governance plan.

9. Kyndryl Privacy Contact

The Kyndryl privacy contact can be contacted at REDACTED