



G-Cloud 11 Call-Off Contract (version 4)

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Part A - Order Form

Digital Marketplace service ID number:	368320477695267
Call-Off Contract reference:	N/A
Call-Off Contract title:	Brandwatch Consumer Research
Call-Off Contract description:	Brandwatch is a provider of digital consumer intelligence SaaS products.
Start date:	29 th April 2020
Expiry date:	28 th April 2022
Call-Off Contract value:	£33,420 +VAT per annum
Charging method:	Invoiced annually in advance
Purchase order number:	TBC

This Order Form is issued under the G-Cloud 11 Framework Agreement (RM1557.11).

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 Deliverables 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	<p>The Secretary of State for Health and Social Care acting as part of the Crown through the Department of Health and Social Care</p> <p>Buyer's main address: 39 Victoria Street Westminster London SW1H 0EU</p>
To: the Supplier	<p>Runtime Collective Limited (doing business as Brandwatch)</p> <p>Supplier's phone: [REDACTED]</p> <p>Supplier's address: Sovereign House, Church Street 1st Floor, Brighton,</p>

	BN1 1UJ England United Kingdom Company number: 03898053
Together: the 'Parties'	

Principle contact details

For the Buyer:	Title: Head of Research, Insight and Evaluation, Strategic Communications Name: [REDACTED] Email: [REDACTED] Phone: [REDACTED]
For the Supplier:	Title: Customer Success Manager Name: [REDACTED] Email: [REDACTED] Phone: [REDACTED]

Call-Off Contract term

Start date:	This Call-Off Contract Starts on 29 th April 2020 and is valid for an initial period of 24-months.
Ending (termination):	The notice period needed for Ending the Call-Off Contract is at least 30 Working Days from the date of written notice for undisputed sums or at least 30 days from the date of written notice for Ending without cause.
Extension period:	This Call-Off Contract can be extended by mutual agreement of the parties for two period(s) of up to 12-months each, on the understanding that the Supplier may need to increase the fees for any such renewal terms.

Buyer contractual details

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

G-Cloud lot:	This Call-Off Contract is for the provision of Services under: Lot 2 - Cloud software
G-Cloud services required:	The Services to be provided by the Supplier under the above Lot are listed in Framework Section 2 and outlined below:

Services Description	Quantity	Units	Description	Fee Type	Total Fees over Initial Term
Brandwatch Consumer Research (BCR) - Premium	15	Queries	Access to BCR Premium with query amount specified: 2 year Query save history Data per Query saved for rolling 2 year period Up to 50 Twitter Channel Queries Up to 50 Instagram and Facebook Channel Queries 50 Users Configurable Dashboards Dashboard Exports Signals and Alerts Search Within Basic Smart Reporting Rules Categories Brightview machine learning Basic API (Metrics and Analysis) Mentions exports (CSV) up to 10,000 mentions per day	Recurring	GBP [REDACTED]
Audiences - Enterprise	1	Unit	-Up to 10 Users (for Brandwatch for Agencies Accounts, this is restricted to only your employees and no third parties). -Can also be sold standalone with a free 0 Mentions Analytics account. -Unlimited searches, saved audiences and audience csv downloads. -Use of Audiences data for paid advertising is strictly limited to	Recurring	GBP [REDACTED]

				Twitter Ads		
					TOTAL:	GBP 33,420
Additional Services:	N/A					
Location:	N/A					
Quality standards:	N/A					
Technical standards:	N/A					
Service level agreement:	The service level and availability criteria required for this Call-Off Contract are [REDACTED]					
Onboarding:	This is not required as the supplier is the incumbent provider.					
Offboarding:	N/A					
Collaboration agreement:	Not used.					
Limit on Parties' liability:	The annual total liability of either Party for all Property defaults will not exceed [REDACTED]% of the total amount of Charges paid or payable by the Buyer in the 12 months immediately preceding the date any first claim arose.					
Insurance:	<p>The 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 £[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 £[REDACTED] or any higher minimum limit required by Law <p>Supplier will procure the policies set out below in USD equivalent coverage amounts.</p>					
Force majeure:	A Party may End this Call-Off Contract if the Other Party is affected by a Force Majeure Event that lasts for more than 30 consecutive days.					
Audit:	Not applicable for this call-off agreement.					
Buyer's responsibilities:	Not applicable for this call-off agreement.					
Buyer's use of the Services:	Responsibility: Buyer: (a) is responsible for its use of the Services and for its Users' compliance with the online user guides, help and training materials, and your Users' compliance with this Agreement (as if they were you); (b) will ensure that its use of Exported Data complies with Applicable Law; and (c) will comply with the Twitter Terms of Service, usually at http://twitter.com/tos .					

User protection: Buyer will not: (a) knowingly display, distribute, or otherwise make available Supplier Data to any person or entity that you reasonably believe will use Supplier Data in any manner that would have the potential to be inconsistent with that individual's reasonable expectations of privacy; (b) conduct any research or analysis that isolates a small group of individuals or any single individual for unlawful or discriminatory purposes; (c) use Supplier Data to target, segment, or profile any individual based on health, negative financial status or condition, political affiliation or beliefs, racial or ethnic origin, religious or philosophical affiliation or beliefs, sex life or sexual orientation, trade union membership, data relating to any alleged or actual commission of a crime, or any other sensitive categories of personal information prohibited by law; (d) without Supplier's prior written consent, display, distribute, or otherwise make Supplier Data available to any member of the US intelligence community or any other government or public sector entity.

Buyer is responsible for ensuring that any user IDs and passwords required for its Users to use Services are kept safe and confidential. Buyer will promptly notify us upon discovery if the security of a user ID or password may be compromised.

Restrictions: Buyer will not: (a) sell, resell, license, sublicense, distribute, or otherwise make the Services (or the results of the Services) available to anybody other than its Users; (b) subject to applicable law, attempt to reverse compile, disassemble, reverse engineer, or otherwise reduce to human-perceivable form any part of the Services; (c) use the Services or any Supplier Data to violate applicable law, including applicable law about data protection, privacy, or information security; (d) communicate any material which is obscene, defamatory, offensive, or abusive via the Services; or (e) purposefully interfere with or disrupt the integrity or performance of our Services, including spamming, hacking, purposefully violating or circumventing our API rate limits, or similar activities.

Removal of Supplier Data: A licensor or applicable law may require Supplier to remove Supplier Data from the Services. In such cases, Supplier will notify Buyer of the impacted data and Buyer will promptly remove the same Exported Data from its systems, whether during or after the term of this Agreement.

The following terms have the following meanings:

"Exported Data" means Supplier Data that is exported or downloaded from Supplier's Systems.

"Mention" means a piece of information that satisfies a Query, including a blog entry or a Tweet.

"Query" means a combination of words, phrases, numbers, and/or search operators used to define a search of Supplier Data.

	<p>“Services” means the G-Cloud Services as set out in this Call-Off Agreement.</p> <p>“User” means an individual that Buyer has authorised to use the G-Cloud Services</p>
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Government use	<p>Buyer agrees to the below pass through terms directly with Twitter. References to “you” are to Buyer.</p> <p style="text-align: center;">“Pass-Through Terms”</p> <p>You agree that you will not use Twitter Content, or display, distribute, or otherwise make available Twitter Content to any person or entity that you reasonably believe will use Twitter Content:</p> <ul style="list-style-type: none"> • in any manner that would have the potential to be inconsistent with Twitter’s users’ reasonable expectations of privacy. • to investigate, track or surveil Twitter’s users or their Content, or to obtain information on Twitter users or their Content, in a manner that would require a subpoena, court order, or other valid legal process. • to conduct analyses or research on Twitter Content that isolates a group of individuals or any single individual for any unlawful or discriminatory purposes. • to target, segment, or profile any individual user, based on health, negative financial status or condition, political affiliation or beliefs, racial or ethnic origin, religious or philosophical affiliation or beliefs, sex life or sexual orientation, trade union membership, data relating to any alleged or actual commission of a crime, or any other sensitive categories of personal information prohibited by law. • to violate the Universal Declaration of Human Rights (located at http://www.un.org/en/documents/udhr/), including without limitation Articles 12, 18, or 19. <p>If law enforcement personnel request information about Twitter or its users for the purposes of an ongoing investigation, you may refer them to Twitter’s Guidelines for Law Enforcement located at https://t.co/le.</p> <p><i>Government Use:</i></p> <p>The Twitter API and Twitter Content are “commercial items” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Any use, modification, derivative, reproduction, release, performance, display, disclosure or distribution of the Twitter API or Twitter Content by any government entity is prohibited, except as expressly permitted by the terms of this Agreement. Additionally, any use by U.S. government entities must be in accordance with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4. If you use the Twitter API or Twitter Content in your official capacity as an employee or representative of a U.S., state or local government entity and you are legally unable to accept the indemnity, jurisdiction, venue or other clauses herein, then those clauses do not apply to such entity, but only to the extent as required by applicable law. For the purpose of this provision, contractor/manufacture is Twitter, Inc., 1355 Market Street, Suite 900, San Francisco, California 94103.</p>
Subcontractors or partners:	Not applicable for this call-off agreement.

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 against the Invoiced annually at the Charges as set out above.
Payment profile:	The payment profile for this Call-Off Contract is annually in advance.

Invoice details:	The Supplier will issue electronic invoices annually in advance. The Buyer will pay the Supplier within 30 days of receipt of a valid invoice.																							
Who and where to send invoices to:	Invoices will be sent to: <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> Accounts Payable Department of Health & Social Care																							
Invoice information required – for example purchase order, project reference:	All invoices must include the Purchase Order supplied to enable prompt invoice matching and payment.																							
Invoice frequency:	Invoice will be sent to the Buyer annually in advance.																							
Call-Off Contract value:	The total value of this Call-Off Contract is £66,840 +VAT over 2yrs																							
Call-Off Contract charges:	<p>The breakdown of the Charges is:</p> <table border="1" data-bbox="466 766 1503 2024"> <thead> <tr> <th data-bbox="466 766 641 891">Services Description</th> <th data-bbox="641 766 778 891">Quantity</th> <th data-bbox="778 766 916 891">Units</th> <th data-bbox="916 766 1161 891">Description</th> <th data-bbox="1161 766 1331 891">Fee Type</th> <th data-bbox="1331 766 1503 891">Total Fees over Initial Term</th> </tr> </thead> <tbody> <tr> <td data-bbox="466 891 641 1998">Brandwatch Consumer Research (BCR) - Premium</td> <td data-bbox="641 891 778 1998">15</td> <td data-bbox="778 891 916 1998">Queries</td> <td data-bbox="916 891 1161 1998">Access to BCR Premium with query amount specified: 2 year Query save history Data per Query saved for rolling 2 year period Up to 50 Twitter Channel Queries Up to 50 Instagram and Facebook Channel Queries 50 Users Configurable Dashboards Dashboard Exports Signals and Alerts Search Within Basic Smart Reporting Rules Categories Brightview machine learning Basic API (Metrics and Analysis) Mentions exports (CSV) up to 10,000 mentions per day</td> <td data-bbox="1161 891 1331 1998">Recurring</td> <td data-bbox="1331 891 1503 1998">GBP <div style="background-color: black; width: 50px; height: 15px; margin-top: 5px;"></div></td> </tr> <tr> <td data-bbox="466 1998 641 2024">Audiences -</td> <td data-bbox="641 1998 778 2024">1</td> <td data-bbox="778 1998 916 2024">Unit</td> <td data-bbox="916 1998 1161 2024">-Up to 10 Users</td> <td data-bbox="1161 1998 1331 2024">Recurring</td> <td data-bbox="1331 1998 1503 2024">GBP <div style="background-color: black; width: 50px; height: 15px; margin-top: 5px;"></div></td> </tr> </tbody> </table>						Services Description	Quantity	Units	Description	Fee Type	Total Fees over Initial Term	Brandwatch Consumer Research (BCR) - Premium	15	Queries	Access to BCR Premium with query amount specified: 2 year Query save history Data per Query saved for rolling 2 year period Up to 50 Twitter Channel Queries Up to 50 Instagram and Facebook Channel Queries 50 Users Configurable Dashboards Dashboard Exports Signals and Alerts Search Within Basic Smart Reporting Rules Categories Brightview machine learning Basic API (Metrics and Analysis) Mentions exports (CSV) up to 10,000 mentions per day	Recurring	GBP <div style="background-color: black; width: 50px; height: 15px; margin-top: 5px;"></div>	Audiences -	1	Unit	-Up to 10 Users	Recurring	GBP <div style="background-color: black; width: 50px; height: 15px; margin-top: 5px;"></div>
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	Enterprise			(for Brandwatch for Agencies Accounts, this is restricted to only your employees and no third parties). -Can also be sold standalone with a free 0 Mentions Analytics account. -Unlimited searches, saved audiences and audience csv downloads. -Use of Audiences data for paid advertising is strictly limited to Twitter Ads		
					TOTAL:	GBP 33,420

Additional Buyer terms

Performance of the service and deliverables:	<p>This Call-Off Contract will include the following implementation plan, exit and offboarding plans and milestones:</p> <ul style="list-style-type: none"> • If required by the Customer, the Supplier shall produce within one month of the commencement date an implementation plan which shall be subject to the Customer's written approval. The Supplier shall ensure that the Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation and/or transformation of the G-Cloud services. • The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan. • The Supplier shall perform its obligations so as to achieve each milestone by milestone date. • Changes to the milestones shall only be made in accordance with the Variation procedure as set out in the Call Off Agreement and provided that the Supplier shall not attempt to postpone any of the milestones using the Variation procedure or otherwise (except in the event of Customer default which affects the Supplier's ability to achieve a milestone by the relevant milestone date).
Guarantee:	N/A
Warranties,	N/A

representations:	
Supplemental requirements in addition to the Call-Off terms:	Please refer to the Brandwatch Terms and Conditions at the end of this document.
Alternative clauses:	N/A
Buyer specific amendments to/refinements of the Call-Off Contract terms:	N/A
Public Services Network (PSN):	N/A
Personal Data and Data Subjects:	Confirm whether either Annex 1 or Annex 2 of Schedule 7 is being used: Annex 1

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 and Order Form will supersede those of the Supplier Terms and Conditions.

2. Background to the agreement

- (A) The Supplier is a provider of G-Cloud Services and agreed to provide the Services under the terms of Framework Agreement number RM1557.11.
- (B) The Buyer provided an Order Form for Services to the Supplier.

Signed:	Supplier	Buyer
Name:		Sachin Joshi
Title:	General Council	Procurement Category Manager (ICT & Digital) for DHSC
Signature:		
Date:	23 April 2020	23 April 2020

Schedule 1 - Services

As above.

Schedule 2 - Call-Off Contract charges

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

As above

Part B - Terms and conditions

1. Call-Off Contract start date and length

- 1.1 The Supplier must start providing the Services on the date specified in the Order Form.
- 1.2 This Call-Off Contract will expire on the Expiry Date in the Order Form. It will be for up to 24 months from the Start Date unless Ended earlier under clause 18 or extended by the Buyer under clause 1.3.
- 1.3 The Buyer can extend this Call-Off Contract, with written notice to the Supplier, by the period in the Order Form, as long as this is within the maximum permitted under the Framework Agreement of 2 periods of up to 12 months each.
- 1.4 The Parties must comply with the requirements under clauses 21.3 to 21.8 if the Buyer reserves the right in the Order Form to extend the contract beyond 24 months.

2. Incorporation of terms

- 2.1 The following Framework Agreement clauses (including clauses and defined terms referenced by them) as modified under clause 2.2 are incorporated as separate Call-Off Contract obligations and apply between the Supplier and the Buyer:
 - 4.1 (Warranties and representations)
 - 4.2 to 4.7 (Liability)
 - 4.11 to 4.12 (IR35)
 - 5.4 to 5.5 (Force majeure)
 - 5.8 (Continuing rights)
 - 5.9 to 5.11 (Change of control)
 - 5.12 (Fraud)
 - 5.13 (Notice of fraud)
 - 7.1 to 7.2 (Transparency)
 - 8.3 (Order of precedence)
 - 8.4 (Relationship)
 - 8.7 to 8.9 (Entire agreement)
 - 8.10 (Law and jurisdiction)
 - 8.11 to 8.12 (Legislative change)
 - 8.13 to 8.17 (Bribery and corruption)
 - 8.18 to 8.27 (Freedom of Information Act)
 - 8.28 to 8.29 (Promoting tax compliance)
 - 8.30 to 8.31 (Official Secrets Act)
 - 8.32 to 8.35 (Transfer and subcontracting)
 - 8.38 to 8.41 (Complaints handling and resolution)

- 8.42 to 8.48 (Conflicts of interest and ethical walls)
- 8.49 to 8.51 (Publicity and branding)
- 8.52 to 8.54 (Equality and diversity)
- 8.57 to 8.58 (data protection)
- 8.62 to 8.63 (Severability)
- 8.64 to 8.77 (Managing disputes and Mediation)
- 8.78 to 8.86 (Confidentiality)
- 8.87 to 8.88 (Waiver and cumulative remedies)
- 8.89 to 8.99 (Corporate Social Responsibility)
- paragraphs 1 to 10 of the Framework Agreement glossary and interpretations
- any audit provisions from the Framework Agreement set out by the Buyer in the Order Form

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

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

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

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

3. Supply of services

3.1 The Supplier agrees to supply the G-Cloud Services and any Additional Services under the terms of the Call-Off Contract and the Supplier's Application.

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

4. Supplier staff

4.1 The Supplier Staff must:

- be appropriately experienced, qualified and trained to supply the Services
- apply all due skill, care and diligence in faithfully performing those duties
- obey all lawful instructions and reasonable directions of the Buyer and provide the Services to the reasonable satisfaction of the Buyer

- respond to any enquiries about the Services as soon as reasonably possible
- complete any necessary Supplier Staff vetting as specified by the Buyer

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

5. Due diligence

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

6. Business continuity and disaster recovery

- 6.1 The Supplier will have a clear business continuity and disaster recovery plan in their service descriptions.
- 6.2 The Supplier's business continuity and disaster recovery services are part of the Services

and will be performed by the Supplier when required.

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

7. Payment, VAT and Call-Off Contract charges

- 7.1 The Buyer must pay the Charges following clauses 7.2 to 7.11 for the Supplier's delivery of the Services.
- 7.2 The Buyer will pay the Supplier within the number of days specified in the Order Form on receipt of a valid invoice.
- 7.3 The Call-Off Contract Charges include all Charges for payment Processing. All invoices submitted to the Buyer for the Services will be exclusive of any Management Charge.
- 7.4 If specified in the Order Form, the Supplier will accept payment for G-Cloud Services by the Government Procurement Card (GPC). The Supplier will be liable to pay any merchant fee levied for using the GPC and must not recover this charge from the Buyer.
- 7.5 The Supplier must ensure that each invoice contains a detailed breakdown of the G-Cloud Services supplied. The Buyer may request the Supplier provides further documentation to substantiate the invoice.
- 7.6 If the Supplier enters into a Subcontract it must ensure that a provision is included in each Subcontract which specifies that payment must be made to the Subcontractor within 30 days of receipt of a valid invoice.
- 7.7 All Charges payable by the Buyer to the Supplier will include VAT at the appropriate rate.
- 7.8 The Supplier must add VAT to the Charges at the appropriate rate with visibility of the amount as a separate line item.
- 7.9 The Supplier will indemnify the Buyer on demand against any liability arising from the Supplier's failure to account for or to pay any VAT on payments made to the Supplier under this Call-Off Contract. The Supplier must pay all sums to the Buyer at least 5 Working Days before the date on which the tax or other liability is payable by the Buyer.
- 7.10 The Supplier must not suspend the supply of the G-Cloud Services unless the Supplier is entitled to End this Call-Off Contract under clause 18.6 for Buyer's failure to pay undisputed sums of money. Interest will be payable by the Buyer on the late payment of any undisputed sums of money properly invoiced under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.11 If there's an invoice dispute, the Buyer must pay the undisputed amount and return the invoice within 10 Working Days of the invoice date. The Buyer will provide a covering

statement with proposed amendments and the reason for any non-payment. The Supplier must notify the Buyer within 10 Working Days of receipt of the returned invoice if it accepts the amendments. If it does then the Supplier must provide a replacement valid invoice with the response.

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

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

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

9. Insurance

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

9.2 The Supplier will ensure that:

- 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 \$██████████
- the third-party public and products liability insurance contains an 'indemnity to principals' clause for the Buyer's benefit
- all agents and professional consultants involved in the Services hold professional indemnity insurance to a minimum indemnity of \$██████████ for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date
- all agents and professional consultants involved in the Services hold employers liability insurance (except where exempt under Law) to a minimum indemnity of \$██████████ for each individual claim during the Call-Off Contract, and for 6 years after the End or Expiry Date

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

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

- a broker's verification of insurance
- receipts for the insurance premium
- evidence of payment of the latest premiums due

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

- take all risk control measures using Good Industry Practice, including the investigation and reports of claims to insurers
- promptly notify the insurers in writing of any relevant material fact under any insurances
- hold all insurance policies and require any broker arranging the insurance to hold any insurance slips and other evidence of insurance

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

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

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

- premiums, which it will pay promptly
- excess or deductibles and will not be entitled to recover this from the Buyer

10. Confidentiality

10.1 Subject to clause 24.1 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 the Data Protection Legislation or under incorporated Framework Agreement clauses 8.78 to 8.86. The indemnity doesn't apply to the extent that the Supplier breach is due to a Buyer's instruction.

11. Intellectual Property Rights

11.1 Unless otherwise specified in this Call-Off Contract, a Party will not acquire any right, title or interest in or to the Intellectual Property Rights (IPRs) of the other Party or its licensors.

11.2 The Supplier grants the Buyer a non-exclusive, transferable, perpetual, irrevocable, royalty-free licence to use the Project Specific IPRs and any Background IPRs embedded within the Project Specific IPRs for the Buyer's ordinary business activities.

- 11.3 The Supplier must obtain the grant of any third-party IPRs and Background IPRs so the Buyer can enjoy full use of the Project Specific IPRs, including the Buyer's right to publish the IPR as open source.
- 11.4 The Supplier must promptly inform the Buyer if it can't comply with the clause above and the Supplier must not use third-party IPRs or Background IPRs in relation to the Project Specific IPRs if it can't obtain the grant of a licence acceptable to the Buyer.
- 11.5 The Supplier will, on written demand, fully indemnify the Buyer and the Crown 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:
- rights granted to the Buyer under this Call-Off Contract
 - Supplier's performance of the Services
 - use by the Buyer of the Services
- 11.6 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:
- modify the relevant part of the Services without reducing its functionality or performance
 - 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
 - buy a licence to use and supply the Services which are the subject of the alleged infringement, on terms acceptable to the Buyer
- 11.7 Clause 11.5 will not apply if the IPR Claim is from:
- the use of data supplied by the Buyer which the Supplier isn't required to verify under this Call-Off Contract
 - other material provided by the Buyer necessary for the Services
- 11.8 If the Supplier does not comply with clauses 11.2 to 11.6, the Buyer may End this Call-Off Contract for Material Breach. The Supplier will, on demand, refund the Buyer all the money paid for the affected Services.

12. Protection of information

- 12.1 The Supplier must:
- comply with the Buyer's written instructions and this Call-Off Contract when Processing Buyer Personal Data

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

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

- providing the Buyer with full details of the complaint or request
- complying with a data access request within the timescales in the Data Protection Legislation and following the Buyer's instructions
- providing the Buyer with any Buyer Personal Data it holds about a Data Subject (within the timescales required by the Buyer)
- providing the Buyer with any information requested by the Data Subject

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

13. Buyer data

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

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

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

13.3 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 policy and all Buyer requirements in the Order Form.

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

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

- the principles in the Security Policy Framework at <https://www.gov.uk/government/publications/security-policy-framework> and the Government Security Classification policy at <https://www.gov.uk/government/publications/government-security-classifications>
- guidance issued by the Centre for Protection of National Infrastructure on Risk Management at <https://www.cpni.gov.uk/content/adopt-risk-management-approach> and Protection of Sensitive Information and Assets at

<https://www.cpni.gov.uk/protection-sensitive-information-and-assets>

- the National Cyber Security Centre's (NCSC) information risk management guidance, available at <https://www.ncsc.gov.uk/collection/risk-management-collection>
- 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, available at <https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>
- the security requirements of cloud services using the NCSC Cloud Security Principles and accompanying guidance at <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles>

- 13.6 The Buyer will specify any security requirements for this project in the Order Form.
- 13.7 If the Supplier suspects that the Buyer Data has or may become corrupted, lost, breached or significantly degraded in any way for any reason, then the Supplier will notify the Buyer immediately and will (at its own cost if corruption, loss, breach or degradation of the Buyer Data was caused by the action or omission of the Supplier) comply with any remedial action reasonably proposed by the Buyer.
- 13.8 The Supplier agrees to use the appropriate organisational, operational and technological processes to keep the Buyer Data safe from unauthorised use or access, loss, destruction, theft or disclosure.
- 13.9 The provisions of this clause 13 will apply during the term of this Call-Off Contract and for as long as the Supplier holds the Buyer's Data.

14. Standards and quality

- 14.1 The Supplier will comply with any standards in this Call-Off Contract, the Order Form and the Framework Agreement.
- 14.2 The Supplier will deliver the Services in a way that enables the Buyer to comply with its obligations under the Technology Code of Practice, which is available at <https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>
- 14.3 If requested by the Buyer, the Supplier must, at its own cost, ensure that the G-Cloud Services comply with the requirements in the PSN Code of Practice.
- 14.4 If any PSN Services are Subcontracted by the Supplier, the Supplier must ensure that the services have the relevant PSN compliance certification.
- 14.5 The Supplier must immediately disconnect its G-Cloud Services from the PSN if the PSN

Authority considers there is a risk to the PSN's security and the Supplier agrees that the Buyer and the PSN Authority will not be liable for any actions, damages, costs, and any other Supplier liabilities which may arise.

15. Open source

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

16. Security

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

- 16.6 Any system development by the Supplier should also comply with the government's '10 Steps to Cyber Security' guidance, available at <https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>
- 16.7 If a Buyer has requested in the Order Form that the Supplier has a Cyber Essentials certificate, the Supplier must provide the Buyer with a valid Cyber Essentials certificate (or equivalent) required for the Services before the Start Date.

17. Guarantee

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

18. Ending the Call-Off Contract

- 18.1 The Buyer can End this Call-Off Contract at any time by giving 30 days' written notice to the Supplier, unless a shorter period is specified in the Order Form. The Supplier's obligation to provide the Services will end on the date in the notice.
- 18.2 The Parties agree that the:
- Buyer's right to End the Call-Off Contract under clause 18.1 is reasonable considering the type of cloud Service being provided
 - Call-Off Contract Charges paid during the notice period is reasonable compensation and covers all the Supplier's avoidable costs or Losses
- 18.3 Subject to clause 24 (Liability), if the Buyer Ends this Call-Off Contract under clause 18.1, it will indemnify the Supplier against any commitments, liabilities or expenditure which result in any unavoidable Loss by the Supplier, provided that the Supplier takes all reasonable steps to mitigate the Loss. If the Supplier has insurance, the Supplier will reduce its unavoidable costs by any insurance sums available. The Supplier will submit a fully itemised and costed list of the unavoidable Loss with supporting evidence.
- 18.4 The Buyer will have the right to End this Call-Off Contract at any time with immediate effect by written notice to the Supplier if either the Supplier commits:
- a Supplier Default and if the Supplier Default cannot, in the reasonable opinion of the Buyer, be remedied

- any fraud

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

- 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
- an Insolvency Event of the other Party happens
- the other Party ceases or threatens to cease to carry on the whole or any material part of its business

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

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

19. Consequences of suspension, ending and expiry

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

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

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

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

- any rights, remedies or obligations accrued before its Ending or expiration
- the right of either Party to recover any amount outstanding at the time of Ending or expiry
- 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); incorporated Framework Agreement clauses: 4.2 to 4.7 (Liability); 8.42 to 8.48 (Conflicts of interest and ethical walls) and 8.87 to 8.88 (Waiver and cumulative remedies)

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

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

- return all Buyer Data including all copies of Buyer software, code and any other software licensed by the Buyer to the Supplier under it
- return any materials created by the Supplier under this Call-Off Contract if the IPRs are owned by the Buyer
- 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
- 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
- work with the Buyer on any ongoing work
- return any sums prepaid for Services which have not been delivered to the Buyer, within 10 Working Days of the End or Expiry Date

19.6 Each Party will return all of the other Party's Confidential Information and confirm this has been done, unless there is a legal requirement to keep it or this Call-Off Contract states otherwise.

19.7 All licences, leases and authorisations granted by the Buyer to the Supplier will cease at the end of the Call-Off Contract Term without the need for the Buyer to serve notice except if this Call-Off Contract states otherwise.

20. Notices

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

Manner of delivery	Deemed time of delivery	Proof of service
Email	9am on the first Working Day after sending	Sent by pdf to the correct email address without getting an error message

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

21. Exit plan

- 21.1 The Supplier must provide an exit plan in its Application which ensures continuity of service and the Supplier will follow it.
- 21.2 When requested, the Supplier will help the Buyer to migrate the Services to a replacement supplier in line with the exit plan. This will be at the Supplier's own expense if the Call-Off Contract Ended before the Expiry Date due to Supplier cause.
- 21.3 If the Buyer has reserved the right in the Order Form to extend the Call-Off Contract Term beyond 24 months the Supplier must provide the Buyer with an additional exit plan for approval by the Buyer at least 8 weeks before the 18 month anniversary of the Start Date.
- 21.4 The Supplier must ensure that the additional exit plan clearly sets out the Supplier's methodology for achieving an orderly transition of the Services from the Supplier to the Buyer or its replacement Supplier at the expiry of the proposed extension period or if the contract Ends during that period.
- 21.5 Before submitting the additional exit plan to the Buyer for approval, the Supplier will work with the Buyer to ensure that the additional exit plan is aligned with the Buyer's own exit plan and strategy.
- 21.6 The Supplier acknowledges that the Buyer's right to extend the Term beyond 24 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:
- the Buyer will be able to transfer the Services to a replacement supplier before the expiry or Ending of the extension period on terms that are commercially reasonable and acceptable to the Buyer
 - there will be no adverse impact on service continuity
 - there is no vendor lock-in to the Supplier's Service at exit
 - it enables the Buyer to meet its obligations under the Technology Code Of Practice
- 21.7 If approval is obtained by the Buyer to extend the Term, then the Supplier will comply with its obligations in the additional exit plan.
- 21.8 The additional exit plan must set out full details of timescales, activities and roles and responsibilities of the Parties for:
- 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
 - 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

- the transfer of Project Specific IPR items and other Buyer customisations, configurations and databases to the Buyer or a replacement supplier
- the testing and assurance strategy for exported Buyer Data
- if relevant, TUPE-related activity to comply with the TUPE regulations
- any other activities and information which is reasonably required to ensure continuity of Service during the exit period and an orderly transition

22. Handover to replacement supplier

- 22.1 At least 10 Working Days before the Expiry Date or End Date, the Supplier must provide any:
- data (including Buyer Data), Buyer Personal Data and Buyer Confidential Information in the Supplier's possession, power or control
 - other information reasonably requested by the Buyer
- 22.2 On reasonable notice at any point during the Term, the Supplier will provide any information and data about the G-Cloud Services reasonably requested by the Buyer (including information on volumes, usage, technical aspects, service performance and staffing). This will help the Buyer understand how the Services have been provided and to run a fair competition for a new supplier.
- 22.3 This information must be accurate and complete in all material respects and the level of detail must be sufficient to reasonably enable a third party to prepare an informed offer for replacement services and not be unfairly disadvantaged compared to the Supplier in the buying process.

23. Force majeure

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

24. Liability

- 24.1 Subject to incorporated Framework Agreement clauses 4.2 to 4.7, each Party's Yearly total liability for defaults under or in connection with this Call-Off Contract (whether expressed as an indemnity or otherwise) will be set as follows:

- Property: for all defaults resulting in direct loss to the property (including technical infrastructure, assets, IPR or equipment but excluding any loss or damage to Buyer Data) of the other Party, will not exceed the amount in the Order Form
- Buyer Data: for all defaults resulting in direct loss, destruction, corruption, degradation or damage to any Buyer Data caused by the Supplier's default will not exceed the amount in the Order Form
- Other defaults: for all other defaults, claims, Losses or damages, whether arising from breach of contract, misrepresentation (whether under common law or statute), tort (including negligence), breach of statutory duty or otherwise will not exceed the amount in the Order Form

25. Premises

- 25.1 If either Party uses the other Party's premises, that Party is liable for all loss or damage it causes to the premises. It is responsible for repairing any damage to the premises or any objects on the premises, other than fair wear and tear.
- 25.2 The Supplier will use the Buyer's premises solely for the performance of its obligations under this Call-Off Contract.
- 25.3 The Supplier will vacate the Buyer's premises when the Call-Off Contract Ends or expires.
- 25.4 This clause does not create a tenancy or exclusive right of occupation.
- 25.5 While on the Buyer's premises, the Supplier will:
- comply with any security requirements at the premises and not do anything to weaken the security of the premises
 - comply with Buyer requirements for the conduct of personnel
 - comply with any health and safety measures implemented by the Buyer
 - immediately notify the Buyer of any incident on the premises that causes any damage to Property which could cause personal injury
- 25.6 The Supplier will ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Buyer on request.

26. Equipment

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

- 26.2 Any Equipment brought onto the premises will be at the Supplier's own risk and the Buyer will have no liability for any loss of, or damage to, any Equipment.
- 26.3 When the Call-Off Contract Ends or expires, the Supplier will remove the Equipment and any other materials leaving the premises in a safe and clean condition.

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

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

28. Environmental requirements

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

29. The Employment Regulations (TUPE)

- 29.1 The Supplier agrees that if the Employment Regulations apply to this Call-Off Contract on the Start Date then it must comply with its obligations under the Employment Regulations and (if applicable) New Fair Deal (including entering into an Admission Agreement) and will indemnify the Buyer or any Former Supplier for any loss arising from any failure to comply.
- 29.2 Twelve months before this Call-Off Contract expires, or after the Buyer has given notice to End it, and within 28 days of the Buyer's request, the Supplier will fully and accurately disclose to the Buyer all staff information including, but not limited to, the total number of staff assigned for the purposes of TUPE to the Services. For each person identified the Supplier must provide details of:
- the activities they perform
 - age
 - start date
 - place of work
 - notice period
 - redundancy payment entitlement
 - salary, benefits and pension entitlements

- employment status
- identity of employer
- working arrangements
- outstanding liabilities
- sickness absence
- copies of all relevant employment contracts and related documents
- all information required under regulation 11 of TUPE or as reasonably requested by the Buyer

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

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

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

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

- its failure to comply with the provisions of this clause
- any claim by any employee or person claiming to be an employee (or their employee representative) of the Supplier which arises or is alleged to arise from any act or omission by the Supplier on or before the date of the Relevant Transfer

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

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

30. Additional G-Cloud services

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

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

31. Collaboration

- 31.1 If the Buyer has specified in the Order Form that it requires the Supplier to enter into a Collaboration Agreement, the Supplier must give the Buyer an executed Collaboration Agreement before the Start Date.
- 31.2 In addition to any obligations under the Collaboration Agreement, the Supplier must:
- work proactively and in good faith with each of the Buyer's contractors
 - co-operate and share information with the Buyer's contractors to enable the efficient operation of the Buyer's ICT services and G-Cloud Services

32. Variation process

- 32.1 The Buyer can request in writing a change to this Call-Off Contract if it isn't a material change to the Framework Agreement/or this Call-Off Contract. Once implemented, it is called a Variation.
- 32.2 The Supplier must notify the Buyer immediately in writing of any proposed changes to their G-Cloud Services or their delivery by submitting a Variation request. This includes any changes in the Supplier's supply chain.
- 32.3 If Either Party can't agree to or provide the Variation, the Buyer may agree to continue performing its obligations under this Call-Off Contract without the Variation, or End this Call-Off Contract by giving 30 days notice to the Supplier.

33. Data Protection Legislation (GDPR)

- 33.1 Pursuant to clause 2.1 and for the avoidance of doubt, clauses 8.57 and 8.58 of the Framework Agreement are incorporated into this Call-Off Contract. For reference, the appropriate GDPR templates which are required to be completed in accordance with clauses 8.57 and 8.58 are reproduced in this Call-Off Contract document at schedule 7

Schedule 3 - Collaboration agreement (Not used)

Schedule 4 - Alternative clauses (Not used)

Schedule 5 – Guarantee (Not used)

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 Section 2 (Services Offered) 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 Digital Marketplace).
Audit	An audit carried out under the incorporated Framework Agreement clauses specified by the Buyer in the Order (if any).
Background IPRs	<p>For each Party, IPRs:</p> <ul style="list-style-type: none">• owned by that Party before the date of this Call-Off Contract (as may be enhanced and/or modified but not as a consequence of the Services) including IPRs contained in any of the Party's Know-How, documentation and processes• created by the Party independently of this Call-Off Contract, or <p>For the Buyer, Crown Copyright which isn't available to the Supplier otherwise than under this Call-Off Contract, but excluding IPRs owned by that Party in Buyer software or Supplier software.</p>
Buyer	The contracting authority ordering services as set out in the Order Form.
Buyer Data	All data supplied by the Buyer to the Supplier including Personal Data and Service Data that is owned and managed by the Buyer.
Buyer Personal Data	The personal data supplied by the Buyer to the Supplier for purposes of, or in connection with, this Call-Off Contract.
Buyer Representative	The representative appointed by the Buyer under this Call-Off Contract.
Buyer Software	Software owned by or licensed to the Buyer (other than under this Agreement), which is or will be used by the Supplier to provide the Services.
Call-Off Contract	This call-off contract entered into following the provisions of the Framework Agreement for the provision of Services made between the Buyer and the Supplier comprising the Order Form, the Call-Off terms and conditions, the Call-Off schedules and the Collaboration Agreement.
Charges	The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under this Call-Off Contract.
Collaboration Agreement	An agreement, substantially in the form set out at Schedule 3, between the Buyer and any combination of the Supplier and contractors, to ensure

	collaborative working in their delivery of the Buyer's Services and to ensure that the Buyer receives end-to-end services across its IT estate.
Commercially Sensitive Information	Information, which the Buyer has been notified about by the Supplier in writing before the Start Date with full details of why the Information is deemed to be commercially sensitive.
Confidential Information	Data, personal data and any information, which may include (but isn't limited to) any: <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 GDPR.
Crown	The government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies carrying out functions on its behalf.
Data Loss Event	event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Framework Agreement 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	An assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data.
Data Protection Legislation (DPL)	Data Protection Legislation means: <ul style="list-style-type: none"> i) (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time ii) (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to Processing of personal data and privacy; iii) (iii) all applicable Law about the Processing of personal data and privacy including if applicable legally binding guidance and codes of practice issued by the Information Commissioner .
Data Subject	Takes the meaning given in the GDPR
Default	Default is any: <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>
Deliverable(s)	The G-Cloud Services the Buyer contracts the Supplier to provide under this Call-Off Contract.

Digital Marketplace	The government marketplace where Services are available for Buyers to buy. (https://www.digitalmarketplace.service.gov.uk/)
DPA 2018	Data Protection Act 2018.
Employment Regulations	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) ('TUPE') which implements the Acquired Rights Directive.
End	Means to terminate; and Ended and Ending are construed accordingly.
Environmental Information Regulations or EIR	The Environmental Information Regulations 2004 together with any guidance or codes of practice issued by the Information Commissioner or relevant Government department about the regulations.
Equipment	The Supplier's hardware, computer and telecoms devices, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from CCS or the Buyer) in the performance of its obligations under this Call-Off Contract.
ESI Reference Number	The 14 digit ESI reference number from the summary of 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: http://tools.hmrc.gov.uk/esi
Expiry Date	The expiry date of this Call-Off Contract in the Order Form.
Force Majeure	<p>A Force Majeure event means anything affecting either Party's performance of their obligations arising from any:</p> <ul style="list-style-type: none"> ● acts, events or omissions beyond the reasonable control of the affected Party ● riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare ● acts of government, local government or Regulatory Bodies ● fire, flood or disaster and any failure or shortage of power or fuel ● industrial dispute affecting a third party for which a substitute third party isn't reasonably available <p>The following do not constitute a Force Majeure event:</p> <ul style="list-style-type: none"> ● any industrial dispute about the Supplier, its staff, or failure in the Supplier's (or a Subcontractor's) supply chain ● any event which is attributable to the wilful act, neglect or failure to take reasonable precautions by the Party seeking to rely on Force Majeure ● the event was foreseeable by the Party seeking to rely on Force Majeure at the time this Call-Off Contract was entered into ● any event which is attributable to the Party seeking to rely on Force Majeure and its failure to comply with its own business continuity and disaster recovery plans
Former Supplier	A supplier supplying services to the Buyer before the Start Date that are the same as or substantially similar to the Services. This also includes any Subcontractor or the Supplier (or any subcontractor of the Subcontractor).
Framework Agreement	The clauses of framework agreement RM1557.11 together with the Framework Schedules.
Fraud	Any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of

	fraudulent acts in relation to this Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.
Freedom of Information Act or FoIA	The Freedom of Information Act 2000 and any subordinate legislation made under the Act together with any guidance or codes of practice issued by the Information Commissioner or relevant Government department in relation to the legislation.
G-Cloud Services	The cloud services described in Framework Agreement Section 2 (Services Offered) 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.
GDPR	The General Data Protection Regulation (Regulation (EU) 2016/679).
Good Industry Practice	Standards, practices, methods and process conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar undertaking in the same or similar circumstances.
Government Procurement Card	The Government's preferred method of purchasing and payment for low value goods or services https://www.gov.uk/government/publications/government-procurement-card--2 .
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.
Intellectual Property Rights or IPR	Intellectual Property Rights are: <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

	<p>any of the rights listed at (a) that are capable of being registered in any country or jurisdiction</p> <ul style="list-style-type: none"> • 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 CCS's possession before the Start Date.
Law	Any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, judgment of a relevant court of law, or directives or requirements of any Regulatory Body.
LED	Law Enforcement Directive (EU) 2016/680.
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 section 6 (What you report to CCS).
Material Breach	Those breaches which have been expressly set out as a material breach and any other single serious breach or persistent failure to perform as required under this Call-Off Contract.
Ministry of Justice Code	The Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000.

New Fair Deal	The revised Fair Deal position in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 as amended.
Order	An order for G-Cloud Services placed by a Contracting Body with the Supplier in accordance with the Ordering Processes.
Order Form	The order form set out in Part A of the Call-Off Contract to be used by a Buyer to order G-Cloud Services.
Ordered G-Cloud Services	G-Cloud Services which are the subject of an Order by the Buyer.
Outside IR35	Contractual engagements which would be determined to not be within the scope of the IR35 intermediaries legislation if assessed using the ESI tool.
Party	The Buyer or the Supplier and 'Parties' will be interpreted accordingly.
Personal Data	Takes the meaning given in the GDPR.
Personal Data Breach	Takes the meaning given in the GDPR.
Processing	Takes the meaning given in the GDPR
Processor	Takes the meaning given in the GDPR.
Prohibited Act	To directly or indirectly offer, promise or give any person working for or engaged by a Buyer or CCS a financial or other advantage to: <ul style="list-style-type: none"> ● induce that person to perform improperly a relevant function or activity ● reward that person for improper performance of a relevant function or activity ● commit any offence: <ul style="list-style-type: none"> ○ under the Bribery Act 2010 ○ under legislation creating offences concerning Fraud ○ at common Law concerning Fraud ○ committing or attempting or conspiring to commit Fraud
Project Specific IPRs	Any intellectual property rights in items created or arising out of the performance by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call-Off Contract including databases, configurations, code, instructions, technical documentation and schema but not including the Supplier's Background IPRs.
Property	Assets and property including technical infrastructure, IPRs and equipment.
Protective Measures	Appropriate technical and organisational measures which may include: pseudonymising 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.
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 Section 2 (Services Offered) of the Framework Agreement.
Service Description	The description of the Supplier service offering as published on the Digital Marketplace.
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-check-if-you-need-approval-to-spend-money-on-a-service
Start Date	The start date of this Call-Off Contract as set out in the Order Form.
Subcontract	Any contract or agreement or proposed agreement between the Supplier and a Subcontractor in which the Subcontractor agrees to provide to the Supplier the G-Cloud Services or any part thereof or facilities or goods and services necessary for the provision of the G-Cloud Services or any part thereof.
Subcontractor	Any third party engaged by the Supplier under a Subcontract (permitted under the Framework Agreement and the Call-Off Contract) and its servants or agents in connection with the provision of G-Cloud Services.
Subprocessor	Any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract.
Supplier	The person, firm or company identified in the Order Form.
Supplier Representative	The representative appointed by the Supplier from time to time in relation to the Call-Off Contract.
Supplier Staff	All persons employed by the Supplier together with the Supplier's servants, agents, suppliers and Subcontractors used in the performance of its obligations under this Call-Off Contract.
Supplier Terms	The relevant G-Cloud Service terms and conditions as set out in the Terms and Conditions document supplied as part of the Supplier's Application.
Term	The term of this Call-Off Contract as set out in the Order Form.

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

Schedule 7 - GDPR Information

This schedule reproduces the annexes to the GDPR schedule contained within the Framework Agreement and incorporated into this Call-off Contract.

Annex 1 - Processing Personal Data

In the course of Brandwatch providing our services, each of us and our customers act as independent data controllers.

You can find more information about data privacy generally in our FAQs ██████████

However, at a high level, Brandwatch independently determines the methods and means of the personal data that we process. We decide which websites to collect data from, how to store/index that data, etc.

Our processing activities exist irrespective of a given customer's requests. For example, if DHSC were no longer our customer, none of our data processing activities would change.



Terms and Conditions

Last updated 30 April 2017

1. Definitions
2. “Agreement” means these terms and conditions, the [Service Level Agreement](#), and any Order Form.
3. “Applicable Law” means any legally binding obligation applicable to a party, including statutes, rules, regulations, codes, court rulings, or any other binding requirement.
4. “Brandwatch”, “we” “us”, or “our” means Runtime Collective Limited (doing business as Brandwatch), with its registered office at Sovereign House, Church Street 1st Floor, Brighton, BN1 1UJ, with company number 03898053 and VAT number 754 7507 10.
5. “Brandwatch Data” means any Mention, any metadata about a Mention, or any other proprietary data that is related to any services we offer.
6. “Exported Data” means Brandwatch Data that is exported or downloaded from our systems.
7. “Mention” means a piece of information that satisfies a Query, including a blog entry or a Tweet.
8. “Query” means a combination of words, phrases, numbers, and/or search operators used to define a search of Brandwatch Data.
9. “Order Form” means an ordering document or online order specifying the Services that we agree to provide to you and any Third Party Services (as applicable).
10. “Professional Services” means our training, implementation, or other professional Services.
11. “Services” means the services that we agree to provide to you, including any Professional Services.
12. “Term” is defined in section 7.1.
13. “Third Party Services” means the products or services provided to you by anybody other than us.
14. “User” means an individual that you (or your agency clients) have authorised to use the Services.
15. “you” or “Customer” means the party identified on an Order Form as a customer.
16. The Services
 1. The Services: This Agreement governs your use of our Services and any information provided to you resulting from your use of those Services. The



Services will be set out in an agreed Order Form (and we will not provide any Services except as agreed on an Order Form). The Services are subject to the terms of this Agreement.

2. **Warranties and exclusions:** We warrant that during the Term we will: (a) provide the Services with reasonable skill and care; (b) maintain all licences and permissions necessary to perform our obligations under this Agreement; and (c) not make a material adverse change to the functionality of the Services or Brandwatch Data within the Services.
3. **Services:** We will provide the Services in accordance with the Order Form and any supplemental scope of work. We exclude all liability for delays in performance that are due to your failure to provide what we need to complete the Professional Services.
4. **Third Party Services:** An Order Form may contain obligations on us to provide to you our Services and obligations on a third party to provide to you Third Party Services. The obligation to provide our Services creates a contract between us (as principal) and you (and that contract is this Agreement). The obligation to provide Third Party Services creates a contract between the third party (as principal) and you (to provide Third Party Services to you on the terms that are in place between you and the third party). We are only responsible to you for our Services and not any Third Party Services. We or a third party may send you an Order Form.

17. Your use of the services

1. **Responsibility:** You: (a) are responsible for your use of the Services and for your Users' compliance with the online user guides, help and training materials, and your Users' compliance with this Agreement (as if they were you); (b) will ensure that your use of Exported Data complies with Applicable Law; (c) will comply with the Twitter Terms of Service, usually at <http://twitter.com/tos>; and (d) will comply with the marketing materials we may provide to you related to your use and description of both our Services and our intellectual property rights.
2. **User protection:** You will not: (a) knowingly display, distribute, or otherwise make available Brandwatch Data to any person or entity that you reasonably believe will use Brandwatch Data in any manner that would have the potential to be inconsistent with that individual's reasonable expectations of privacy; (b) conduct any research or analysis that isolates a small group of individuals



or any single individual for unlawful or discriminatory purposes; (c) use Brandwatch Data to target, segment, or profile any individual based on health, negative financial status or condition, political affiliation or beliefs, racial or ethnic origin, religious or philosophical affiliation or beliefs, sex life or sexual orientation, trade union membership, data relating to any alleged or actual commission of a crime, or any other sensitive categories of personal information prohibited by law; (d) without our prior written consent, display, distribute, or otherwise make Brandwatch Data available to any member of the US intelligence community or any other government or public sector entity.

3. **Password protection:** You are responsible for ensuring that any user IDs and passwords required for your Users to use Services are kept safe and confidential. You will promptly notify us upon discovery if the security of a user ID or password may be compromised.
 4. **Restrictions:** You will not: (a) sell, resell, license, sublicense, distribute, or otherwise make the Services (or the results of the Services) available to anybody other than your Users, unless stated otherwise on an Order Form; (b) subject to Applicable Law, attempt to reverse compile, disassemble, reverse engineer, or otherwise reduce to human-perceivable form any part of the Services; (c) use the Services or any Brandwatch Data to violate Applicable Law, including Applicable Law about data protection, privacy, or information security; (d) communicate any material which is obscene, defamatory, offensive, or abusive via the Services; or (e) purposefully interfere with or disrupt the integrity or performance of our Services, including spamming, hacking, purposefully violating or circumventing our API rate limits, or similar activities.
 5. **Removal of Brandwatch Data:** A licensor or Applicable Law may require us to remove Brandwatch Data from our Services. In such cases, we will notify you of the impacted data and you will promptly remove the same Exported Data from your systems, whether during or after the Term.
18. **Fees and payment for services**
1. **Fees:** You will pay the fees for our Services set out in any Order Form. Except as otherwise specified, the fees are based on the Services set out in the Order Form and not on actual usage. The Services set out in the Order Form cannot be decreased during the relevant Term. If you sign an Order Form that a third



party sends to you, you will pay the fees for our Services directly to the third party, who will collect the amounts due to us on our behalf. If you sign an Order Form that we send to you and that contains Third Party Services, you will pay us the fees for our Services and Third Party Services (although we collect the fees for Third Party Services as collecting agent only on behalf of the third party).

2. **Invoicing and Late Payment:** You will provide us with the information we reasonably require to invoice you. If you pay the fees late, we may charge you interest at 1.5% over the applicable base rate of our principal bankers compounded monthly, or any higher amount allowed by Applicable Law. A third party may also charge you interest on late fees owed for Third Party Services.
3. **Taxes:** The fees are exclusive of legally applicable taxes, levies, duties or similar governmental assessments, including goods and services, value-added, and sales taxes (collectively, "Taxes"). If we are legally required to pay or collect Taxes for which you are responsible, we (or a third party) will invoice you and you will pay that amount unless you provide us (or a third party) with a valid tax exemption certificate by the appropriate taxing authority.

19. Confidential information

1. **Confidential Information:** "Confidential Information" means any information that is disclosed by a party ("Disclosing Party") to the other party ("Receiving Party") that is expressly marked as confidential or that a reasonable person under the circumstances would understand to be confidential. Our Confidential Information includes Brandwatch Data, trade secrets, non-public copyrighted materials, our product roadmap, and this Agreement. Confidential Information does not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) the Receiving Party knew prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) the Receiving Party independently developed.
2. **Strict confidence:** From the effective date of this Agreement until two years after the end of the Term, each party will hold in strict confidence, and will not use other than for the purposes of performing its obligations under this



Agreement and/or using or supplying the Services, all Confidential Information of the other party. Nothing in this section 5 prevents the Receiving Party from disclosing the Confidential Information of the Disclosing Party to its corporate affiliates, legal advisers, accountants, or other professional advisers where required (collectively, “Permitted Recipients”), provided that (i) the party so disclosing will remain responsible for its obligations and for the Permitted Recipients' use (and any disclosure) of the Confidential Information.

20. Intellectual Property

1. **Our intellectual property rights:** We, or our licensors, own all intellectual property rights in the Services, including Brandwatch Data and Queries that we generate or write. Except as expressly stated otherwise in this Agreement, no one is granted any rights to or interest of any kind in our intellectual property rights.
2. **Deliverables:** Upon your payment of the fees for any deliverable from Professional Services (specified as such on an Order Form), you will retain all ownership rights to copyrightable works, work product, or other materials we created for you as part of those Professional Services; provided that if the deliverable contains Brandwatch Data, then the Brandwatch Data in the deliverable is granted to you under a worldwide, non-exclusive, non-transferable, royalty-free licence to use the deliverable in accordance with this Agreement.
3. **Exported Data Licence:** We grant to you a worldwide, non-exclusive, non-transferable, royalty-free, licence to use the Exported Data in accordance with this Agreement.
4. **Licence to use your feedback:** You grant to us, and you undertake to procure that your Users grant to us, a worldwide, perpetual, irrevocable, royalty-free licence to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction, or other feedback provided by you or your Users arising out of your use of the Services.

21. Term and termination

1. **Term:** The “Initial Term” of this Agreement is the period designated as such on the Order Form, unless terminated earlier in accordance with this Agreement. After the Initial Term, unless stated otherwise on the Order Form, the Agreement automatically renews for successive periods equal to the



Initial Term (each a “Renewal Term” and collectively the “Term”) unless a party gives at least 30 days written notice to terminate prior to the expiration of the then-current Term, such notice to be effective at the end of the then-current Term.

2. **Mutual termination:** A party may terminate this Agreement by written notice to the other party at any time if: (a) the other party is in material breach and, if remediable, the breach is not remedied within 30 days of being notified in writing of the breach; or (b) the other party begins bankruptcy proceedings or becomes the subject of a petition in liquidation or any other proceeding relating to insolvency, liquidation, or assignment for the benefit of creditors.
 3. **Our termination rights:** We may immediately suspend our performance or terminate this Agreement upon written notice if: (a) you fail to pay any fees by their due date and the default is more than 30 days; (b) you breach sections 3.4 or 3.5; or (c) we have good faith concerns about your financial solvency.
 4. **Accrued rights and liabilities and survival:** Termination of this Agreement, however arising, does not affect the accrued rights and liabilities of the parties as at termination. The following sections survive termination of this Agreement: 1, 3.1, 3.4, 4.3, 5, 6, 7, 8, 9, and 10.
22. **Exclusions and limitations of liability**
1. **What the parties are liable for:** Nothing in this Agreement excludes or limits a party’s liability for any liability that cannot be excluded or limited under Applicable Law (including fraud).
 2. *****IMPORTANT: PLEASE READ SECTIONS 8.2-8.4 CAREFULLY AS THEY EXCLUDE AND/OR LIMIT EACH PARTY’S LIABILITY*****
 3. **Losses a party is never liable for:** Subject to section 8.1, each party excludes all liability, whether in tort (including for negligence), breach of statutory duty, contract, misrepresentation, restitution, or otherwise, direct or indirect, whether foreseeable, known, foreseen, or otherwise, however arising, for any: (a) loss of revenue or profits (of any kind); (b) loss of goodwill; (c) loss of business; (d) losses suffered on third party websites or applications; or (e) special, indirect, or consequential loss, costs, damages, charges, or expenses.
 4. **Other important exclusions of loss:** Subject to sections 2.2 and 8.1, we make no warranties or representations: (a) about the truth or accuracy of our analysis of Brandwatch Data; or (b) that we will have any specific types of data or that you may be able to access third party sites or applications. Other



than as set out elsewhere in this Agreement, we exclude all other warranties, conditions, representations, or other terms (whether express or implied), subject to Applicable Law.

5. **Liability cap:** Subject always to sections 8.1, 8.2, 8.3 and 10.10, each party's total liability, however arising, will under no circumstances exceed in aggregate, the greater of: (a) £30,000 or (b) 110% of the total amount of fees paid or payable for our Services under this Agreement for the 12 months immediately preceding the date any first claim arose.

23. Mutual indemnities

1. **When we indemnify you:** We will indemnify you, your Affiliates, and your and their officers, directors, employees, and agents, against any claims, demands, actions, proceedings, losses, liabilities, damages, expenses, and costs (including court costs and reasonable attorneys' fees), whether direct or indirect (collectively "Losses") arising out of a claim against you that your use of the Services infringes the intellectual property rights of a third party ("IP Indemnity"). The IP Indemnity does not apply if the claim is based on: (a) your modification of the Services without our prior written consent; (b) your use of the Services in a manner contrary to your obligations under this Agreement; or (c) your continued use of the Services after we have notified you of the alleged or actual infringement and requested you to stop using the Services. In the defence or settlement of any claim relating to the IP Indemnity, we may: (i) procure the right for you to continue using the Services; (ii) replace or modify the Services so that they become non-infringing; or (iii) if (i) and (ii) are not reasonably available to us, we may terminate this Agreement (in whole or in part) on 30 days' written notice to you and refund you any prepaid fees covering the remainder of the Term of the terminated Services.
2. **When you indemnify us:** You will indemnify us, our Affiliates, and our and their officers, directors, employees, and agents, against any Losses arising out of your breach (including a breach by your Users or any agency clients) of sections 3.2 or 3.4.
3. **Indemnity process:** An indemnity is subject to the indemnified party giving the indemnifying party prompt written notice of any claim and sole control to defend or settle the claim. The indemnified party will use its commercially reasonable efforts to mitigate its Losses.

24. General



1. **Privacy:** We collect and process User data in accordance with our [Privacy Statement](#).
2. **Rules of interpretation:** The following rules of interpretation apply to this Agreement: (a) the words “include” and “including” are deemed to have the words “without limitation” following them; (b) references to the singular include the plural and vice versa; and (c) references to “will” are to be construed as having the same meaning as “shall”.
3. **Force Majeure:** Neither party is liable for a breach caused by an event beyond its reasonable control, including a natural disaster, disease outbreak, war, riot, terrorist action, civil commotion, malicious damage, government action, industrial action or dispute, fire, flood, storm, or failure of third party telecommunications services.
4. **Publicity:** We will not disclose that you are a customer without your prior written consent.
5. **Invalidity:** If any term of this Agreement is found invalid, illegal or unenforceable, the rest of the Agreement remains in effect.
6. **No waiver:** Either party's delay or failure to enforce a term of the Agreement is not a waiver of that right and does not prevent that party from later enforcing that term or any other term.
7. **Notice:** Each party will deliver notices for legal service or material breach by a courier service or recorded delivery: for Brandwatch, to our registered office address as set out above; for you, to your address as set out in an Order Form. Any notices for any matter other than legal service or material breach may be delivered in accordance with the previous sentence or by email. If sent by email, you will send the notice to legalnotices@brandwatch.com and we will send the notice to you via an email address listed in any Order Form. Notice sent by recorded delivery is received three London, UK business days after posting. A party is deemed to receive email notice 24 hours after it is sent.
8. **Assignment:** You may not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner with this Agreement, or any right, benefit, or interest under it, nor transfer or novate (each an “Assignment”) without our prior written consent. Any Assignment without our prior written consent is void.



9. **Anti-bribery:** The parties will: (a) comply with all Applicable Law relating to anti-bribery or anti-corruption; (b) not engage in any act which, if it had occurred in the United Kingdom, the United States, or Singapore would have violated Applicable Law relating to anti-bribery or anti-corruption; and (c) promptly report to the other party if it receives a request for undue advantage.
10. **Entire agreement:** This Agreement, including materials incorporated by reference, constitutes the exclusive statement of agreement and understanding between the parties. This Agreement excludes all prior or contemporaneous proposals, understandings, agreements, or representations, whether oral or written about its subject matter. You agree that no representations were made prior to entering into this Agreement and that, in entering into this Agreement, you do not rely on, and will have no remedy in respect of, any statement, representation, warranty, or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as set out in this Agreement. Nothing in this Agreement excludes or limits our liability for fraudulent misrepresentations or excludes (but this Agreement does limit) our liability for any fundamental misrepresentation.
11. **Order of priority:** If there is a conflict of this Agreement: sections 8 and 10.10 of these terms and conditions prevails over an Order Form, an Order Form prevails over other sections of these terms and conditions, which in turn prevail over the SLA. The English version of these terms and conditions prevails over any non-English version.
12. **Third party rights:** Other than as set out in sections 9.1 and 9.2, nothing in this Agreement creates or confers any rights or other benefits in favour of any person other than the parties to this Agreement even if that person has relied on the term or has indicated to any party to this Agreement its assent to the term.
13. **No agency:** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.
14. **Waiver of Jury Trial:** This is important, please read: each party waives all rights to a jury trial in any legal proceedings arising out of this Agreement.



15. **Governing law and jurisdiction:** Each party agrees to the applicable governing law and to the exclusive jurisdiction of the applicable courts, set out in the table below.

If you are domiciled in:	The governing law is:	The courts having exclusive jurisdiction are:
Australia, New Zealand, or a country in Europe (which includes countries in the European Economic Area and the U.K.), the Middle East, Africa, Central America, South America, or the Caribbean	English	English
U.S.A., Mexico, or Canada	New York and controlling United States federal law, without regard to choice or conflicts of law rules	New York City
Countries in Asia or the Asia Pacific	Singapore	Singapore

