

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

## **Order Form**

CALL-OFF REFERENCE:	W153395 Architecture Diagramming Tool
THE BUYER:	NHS Business Services Authority
BUYER ADDRESS	Stella House, Goldcrest Way, Newcastle Upon Tyne, NE15 8NY
THE SUPPLIER:	Softcat PLC
SUPPLIER ADDRESS:	Solar House, Fieldhouse Lane, Marlow, Buckinghamshire, United Kingdom, SL7 1LW
REGISTRATION NUMBER:	02174990
DUNS NUMBER:	39-733-3253
SID4GOV ID:	N/A

### **APPLICABLE FRAMEWORK CONTRACT**

This Order Form is for the provision of the Call-Off Deliverables and dated 15 July 2025.

Framework Ref: RM6098  
Project Version: v2.0  
Model Version: v3.8

It's issued under the Framework Contract with the reference number RM6098 for the provision of Technology Products & Associated Service 2.

**CALL-OFF LOT(S):**

Lot 3 Software

**CALL-OFF INCORPORATED TERMS**

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

1. This Order Form including the Call-Off Special Terms and Call-Off Special Schedules.
2. Joint Schedule 1 (Definitions and Interpretation) RM6098
3. Framework Special Terms
4. The following Schedules in equal order of precedence:
  - Joint Schedules for RM6098
    - Joint Schedule 2 (Variation Form)
    - Joint Schedule 3 (Insurance Requirements)
    - Joint Schedule 4 (Commercially Sensitive Information)
    - Joint Schedule 10 (Rectification Plan)
    - Joint Schedule 11 (Processing Data)
  - Call-Off Schedules for RM6098
    - Call-Off Schedule 4 (Call Off Tender)
    - Call-Off Schedule 5 (Pricing Details)
    - Call-Off Schedule 20 (Call-Off Specification)
5. CCS Core Terms (version 3.0.11) as amended by the Framework Award Form
6. Joint Schedule 5 (Corporate Social Responsibility) RM6098

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

## **CALL-OFF SPECIAL TERMS**

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

1. This Call-Off Contract incorporates the Lucid Inc. Terms of Service set out in Annex A.
2. Upon expiration of the initial Contract Term, the Buyer's Subscription Service will automatically renew for additional 12-month periods, unless either party provides written notice to the other at least 30 days prior to the end of the current Subscription Term.

CALL-OFF START DATE: **15 July 2025**

CALL-OFF EXPIRY DATE: **14 July 2028**

CALL-OFF INITIAL PERIOD: **36 Months**

CALL-OFF EXTENSION PERIOD: **N/A**

## **CALL-OFF DELIVERABLES**

See details in Call-Off Schedule 20 (Call-Off Specification)

## **LOCATION FOR DELIVERY**

NHSBSA, Stella House, Goldcrest Way, Newcastle Upon Tyne NE15 8NY

## **DATES FOR DELIVERY**

Licences to be available on and from 15 July 2025.

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## **TESTING OF DELIVERABLES**

None

## **WARRANTY PERIOD**

The warranty period for the purposes of Clause 3.1.2 of the Core Terms shall be 90 days.

## **MAXIMUM LIABILITY**

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

The Estimated Year 1 Charges used to calculate liability in the first Contract Year are [REDACTED] (ex VAT)

## **CALL-OFF CHARGES**

The initial contract value is [REDACTED] (exc. VAT).

The total contract value, including projected growth to 150 licences (an increase of 30), is £89,854.58 (exc. VAT).

The Charges will not be impacted by any change to the Framework Prices. Charges will remain fixed for the Contract Term. The Charges can only be changed by agreement in writing between the Buyer and the Supplier because of a Specific Change in Law.

## **REIMBURSABLE EXPENSES**

None

**RM6098 Framework Schedule 6 (Order Form Template and Call-Off Schedules)**

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Project Version: v2.0

Model Version: v3.8

## **PAYMENT METHOD**

Payment shall be made upfront in advance.

Payment to be made via BACs.

## **BUYER'S INVOICE ADDRESS:**

The NHS Business Services Authority  
Accounts Payable

Email: [REDACTED]

Address: Stella House, Goldcrest Way, Newcastle Upon Tyne NE15 8NY

## **BUYER'S AUTHORISED REPRESENTATIVE**

[REDACTED]  
Commercial Officer

[REDACTED]  
Stella House, Goldcrest Way, Newcastle Upon Tyne NE15 8NY

## **BUYER'S ENVIRONMENTAL POLICY**

Detailed in Appendix A of this Order Form

## **BUYER'S SECURITY POLICY**

Detailed in Appendix B of this Order Form

## **SUPPLIER'S AUTHORISED REPRESENTATIVE**

[REDACTED]  
Public Sector Account Director

[REDACTED]  
9th Floor, St Botolph Building, 138 Houndsditch, London EC3A 7DH

**SUPPLIER'S CONTRACT MANAGER**

[REDACTED]

Public Sector Account Director

[REDACTED]

9th Floor, St Botolph Building, 138 Houndsditch, London EC3A 7DH

**PROGRESS REPORT FREQUENCY**

Not required

**PROGRESS MEETING FREQUENCY**

Not required

**KEY STAFF**

[REDACTED]

Solutions Architect

[REDACTED]

Stella House, Goldcrest Way, Newcastle Upon Tyne NE15 8NY

[REDACTED]

Head of Profession – Solution Design and Innovation

[REDACTED]

Stella House, Goldcrest Way, Newcastle Upon Tyne NE15 8NY

**KEY SUBCONTRACTOR(S)**

None

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## **COMMERCIALLY SENSITIVE INFORMATION**

Pricing included in Call Off Schedule 5 of this document.

## **SERVICE CREDITS**

Not applicable

## **ADDITIONAL INSURANCES**

Not applicable

## **GUARANTEE**

Not applicable

## **SOCIAL VALUE COMMITMENT**

The Supplier agrees, in providing the Deliverables and performing its obligations under the Call-Off Contract, that it will comply with the social value commitments in Call-Off Schedule 4 (Call-Off Tender)

<b>For and on behalf of the Supplier:</b>	<b>For and on behalf of the Buyer:</b>
Signed via DocuSign on 30/07/2025	Signed via DocuSign on 30/07/2025

## **Appendix 1: BUYER'S ENVIRONMENTAL POLICY**

## Environmental policy

The NHSBSA is a Special Health Authority and an Arm's Length Body (ALB) of the Department of Health (DH). We provide a range of critical central services to NHS organisations, NHS contractors, patients and the public. The NHSBSA was created in 2006 by bringing together a number of previously separate NHS organisations. We still deliver the core range of services we started with and have taken on additional services as our stakeholders' needs have evolved.

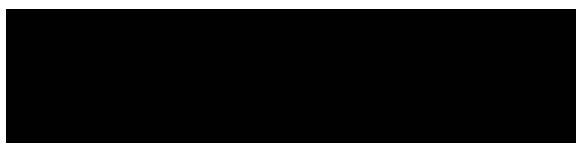
We recognise that our activities, products and services, and the way we choose to deliver them, can have both a negative and positive impact upon the environment, and therefore an impact upon our employees and local communities.

### **We are committed to:**

- ✓ becoming a Net Zero organization by 2030
- ✓ protecting the environment and preventing pollution caused by what we do
- ✓ ensuring that we comply with environmental laws related to what we do, and meeting the requirements of other policies, strategies etc. we support such as those created by Government, Department of Health and NHS
- ✓ continually improve our environmental management system to enhance our performance by setting and reviewing objectives and targets relevant to the NHSBSA each year. We focus on:
  - maintaining an appropriate governance framework, which ensures continual improvement and a commitment to fulfil our compliance obligations
  - reducing greenhouse gas emissions and adapting to climate change
  - reducing waste and maximising resource efficiency
  - reducing water use
  - creating wider environmental, social and economic value, through our activities and our supply chain

### **We will achieve this by:**

- ✓ operating an NHSBSA-wide environmental management system, which instructs staff and others on how to carry out key activities
- ✓ training and coaching staff (and others where appropriate) to ensure they understand how to play their part
- ✓ communicating with staff (and others where appropriate) about environmental issues
- ✓ actively engaging with relevant forums and groups to learn from others and share our knowledge and experience



Michael Brodie, Chief Executive NHSBSA

## **Appendix 2: BUYER'S SECURITY POLICY**

## Information Security Policy

### Issue sheet

Document reference	ISMSPOL 001
Document location	ISMS>Document control>Document review 2023
Title	NHSBSA Information Security Policy
Author	Information Security & Business Continuity Manager
Owner	NHSBSA CEO and NHSBSA SIRO
Issued to	All NHSBSA staff
Reason issued	For information/action
Last reviewed	March 2023
Review Cycle	Two years
Date of Wellbeing and Inclusion Assessment	No Impact
Date of Fraud Review	No Impact

### Revision details

Version	Date	Amended by	Approved by	Details of amendments
V1.0	February 2019	Lead Information Security Risk Manager	BISG	Info sec policy statement signed and ISMSPOL 001 communicated to staff
V2.0	February 2020	Information Security Risk and BC Manager	BISG	Approved at BISG 20/02/2020 – communicated to all staff.
V3.0	January 2021	Information Security Risk and BC Manager	BISG	Approved at BISG
V4.0	March 2023	Information Security & Business Continuity Manager	BISG	Full review to reflect revised structure.

## Information security policy statement

The NHSBSA is committed to ensuring that we manage our information, and the information of our clients and stakeholders that we manage on their behalf, securely. This means that we will implement, and monitor the effectiveness of, controls designed to preserve its confidentiality, integrity, and availability in line with our business and legal and regulatory requirements.

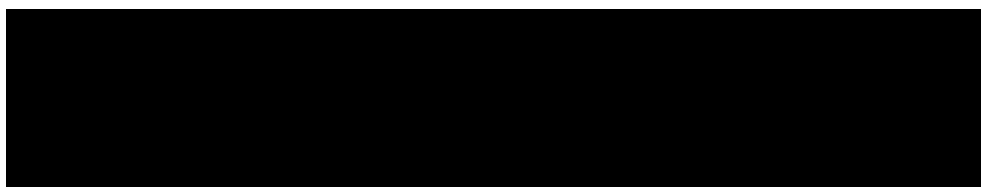
Our information security objectives are aligned to our business objectives and are delivered through our information security management system (ISMS).

Our ISMS is certified to the *ISO27001:2013 Information security management system* standard to ensure that it is independently and regularly assessed for effectiveness and continual improvement.

We have established an information security governance framework and allocated specific roles, responsibilities, and resources to ensure that our ISMS is

- implemented effectively,
- responsive to changes in legal and regulatory requirements,
- responsive to changes to the threat landscape

In support of our specific roles and responsibilities we have an ongoing information security training and awareness programme to ensure that all NHSBSA staff, contractors, and suppliers understand their responsibilities for handling information securely.



## 1. Purpose

- 1.1. This policy is our 'Statement of Management Intent' and is supported by topic- specific policies, each of which will be delivered through appropriate information security standards, processes, procedures and guidelines.
- 1.2. This policy is intended to be read and understood by all NHSBSA staff and stakeholders responsible for managing, maintaining, delivering and assessing the effectiveness of our information security management programme.

## 2. Governance, Roles, and Responsibilities

- 2.1 There is an established information security management governance structure in place which is shown in Annex 1.
- 2.2 Key roles and responsibilities are given below.

### **Accounting Officer**

Our Accounting Officer is the Chief Executive who has overall organisational accountability for effective information security management across the NHSBSA.

### **Senior Information Risk Owner (SIRO)**

Our SIRO is responsible for taking ownership of our information risk policy, acting as an advocate for information risk to the Board, and providing advice to the Accounting Officer on the content of governance statements regarding information risk.

### **Caldicott Guardian**

Our Caldicott Guardian is responsible for ensuring the confidential information of our service users is used ethically, legally and appropriately.

### **Data Protection Officer**

Our Data Protection Officer is responsible for informing and advising NHSBSA employees and stakeholders of their data protection obligations and collaborating with them on managing the relevant privacy risks for customers and staff.

### **Information Asset Owner (IAO)**

Information Asset Owners are Directors of NHSBSA responsible for

- understanding and addressing risks to the information asset they 'own'



- providing assurance to the SIRO on the security and use of their assets, and the effective management of information risk
- maintaining the confidentiality of their information assets, ensuring that access to assets is controlled and that the information is securely kept
- ensuring personal data is identified, securely handled and can be used in ways that it is needed
- ensuring information is appropriately protected and proper safeguards are applied when it is shared
- ensuring information is managed appropriately during and following change
- maintaining an understanding of 'owned' assets and how they are used
- knowing what information is held and who has access to it for what purpose
- leading and fostering a culture that values, protects and uses information for the public good

**Information Asset Administrator (IAA)**

Information Asset Administrators are Heads of Service of NHSBSA responsible for

- providing day-to-day support to the IAO in managing information risks in their area
- ensuring that information security and governance policies and procedures are followed
- ensuring their information asset registers are accurate and up to date
- approving service-based information security risk assessments and risk treatment plans
- ensuring compliance with data sharing agreements within their service
- ensuring service-based information handling procedures are fit for purpose and properly applied
- recognising new information handling requirements and consulting with their IAO over appropriate procedures
- ensuring appropriate access to their information is monitored and maintained

**Head of Security & Information Governance**

Our Head of Security & Information Governance is responsible for

- monitoring the effectiveness of our information security management programme
- providing expert advice to the business on all information security management matters
- ensuring that information security risks are assessed in a timely manner and treated in accordance with our approved risk appetite

**Information Security & Business Continuity Manager**

Our Information Security & Business Continuity Manager is responsible for managing the implementation, effective delivery and continual improvement of our

- information security management system
- information security assurance programme
- information security compliance framework
- business continuity management programme

**Head of Cyber Security and Infrastructure Services**

Our Head of Cyber Security and Infrastructure Services is responsible for

- providing expert advice to the business on all matters concerning technical security
- ensuring the operational effectiveness of technical security controls and processes
- being accountable for technical information security regulatory compliance across the NHSBSA

**Cyber Security Operations Manager**

Our Cyber Security Operations Manager is responsible for

- providing advice and guidance around cyber security threats and vulnerabilities
- providing cyber security architecture and engineering resource to facilitate safe design and implementation of products and technical security controls
- ensuring that all technical security risks are appropriately managed
- monitoring technical security systems and controls and effectively managing alerts
- timely reporting and investigation of cyber security incidents

**Staff and contractors**

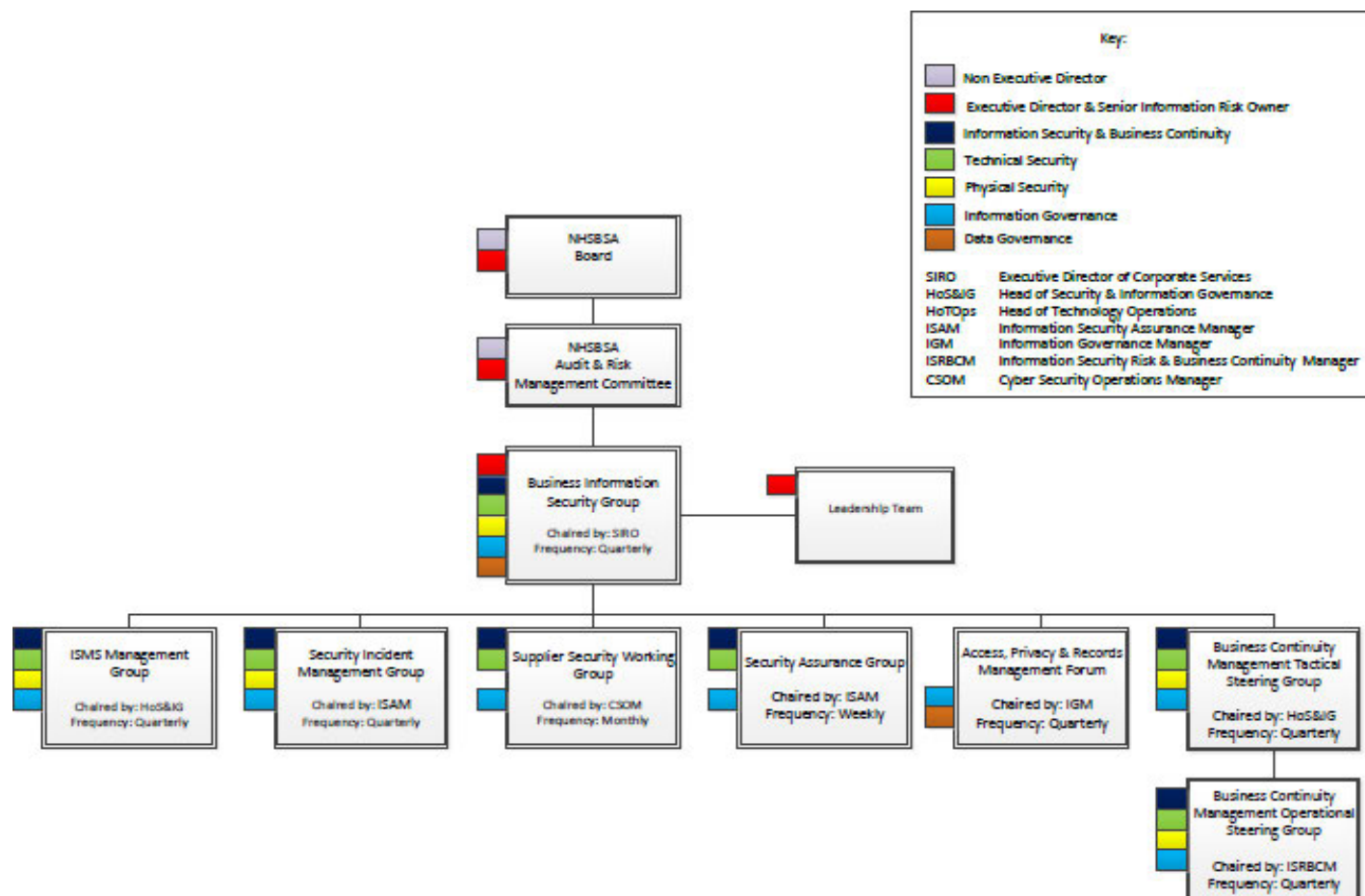
NHSBSA staff and contractors are responsible for

- complying with NHSBSA information security policies, standards, processes and procedures and the appropriate protection of information assets
- being accountable for their actions in relation to the security of information that they manage, process or control
- completing annual training in a timely manner to ensure that information security roles and responsibilities are understood
- safeguarding hardware, software and information in their care

### **3. Compliance**

- 3.1 In applying this policy, the NHSBSA will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.
- 3.2 Compliance with this policy **is** subject to internal and external audit to ensure its effectiveness.

## Annex 1 – ISMS Governance Structure





Crown  
Commercial  
Service

# Core Terms - RM6098

## 1. Definitions used in the contract

Interpret this Contract using Joint Schedule 1 (Definitions).

## 2. How the contract works

- 2.1 The Supplier is eligible for the award of Call-Off Contracts during the Framework Contract Period.
- 2.2 CCS does not guarantee the Supplier any exclusivity, quantity or value of work under the Framework Contract.
- 2.3 CCS has paid one penny to the Supplier legally to form the Framework Contract. The Supplier acknowledges this payment.
- 2.4 If the Buyer decides to buy Deliverables under the Framework Contract it must use Framework Schedule 7 (Call-Off Award Procedure) and must state its requirements using Framework Schedule 6 (Order Form Template and Call-Off Schedules). If allowed by the Regulations, the Buyer can:
  - (a) make changes to Framework Schedule 6 (Order Form Template and Call-Off Schedules);
  - (b) create new Call-Off Schedules;
  - (c) exclude optional template Call-Off Schedules; and/or
  - (d) use Special Terms in the Order Form to add or change terms.
- 2.5 Each Call-Off Contract:
  - (a) is a separate Contract from the Framework Contract;
  - (b) is between a Supplier and a Buyer;
  - (c) includes Core Terms, Schedules and any other changes or items in the completed Order Form; and
  - (d) survives the termination of the Framework Contract.
- 2.6 Where the Supplier is approached by any Other Contracting Authority requesting Deliverables or substantially similar goods or services, the Supplier must tell them about this Framework Contract before accepting their order.
- 2.7 The Supplier acknowledges it has all the information required to perform its obligations under each Contract before entering into a Contract. When information is provided by a Relevant Authority no warranty of its accuracy is given to the Supplier.
- 2.8 The Supplier will not be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:
  - (a) verify the accuracy of the Due Diligence Information; or
  - (b) properly perform its own adequate checks.

- 2.9 CCS and the Buyer will not be liable for errors, omissions or misrepresentation of any information.
- 2.10 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

### **3. What needs to be delivered**

#### **3.1 All deliverables**

##### **3.1.1 The Supplier must provide Deliverables:**

- (a) that comply with the Specification, the Framework Tender Response and, in relation to a Call-Off Contract, the Call-Off Tender (if there is one);
- (b) to a professional standard;
- (c) using reasonable skill and care;
- (d) using Good Industry Practice;
- (e) using its own policies, processes and internal quality control measures as long as they do not conflict with the Contract;
- (f) on the dates agreed; and
- (g) that comply with Law.

##### **3.1.2 The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects.**

#### **3.2 Goods clauses**

- 3.2.1 All Goods delivered must be new, or as new if recycled or refurbished, and of known origin and authenticity.
- 3.2.2 All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.
- 3.2.3 The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.
- 3.2.4 Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.
- 3.2.5 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 3.2.6 The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.

- 3.2.7 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 3.2.8 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 3.2.9 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- 3.2.10 The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.
- 3.2.11 The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than 14 days notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.
- 3.2.12 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they do not conform with Clause 3. If the Supplier does not do this it will pay the Buyer's costs including repair or re-supply by a third party.

### **3.3 Services clauses**

- 3.3.1 Late Delivery of the Services will be a Default of a Call-Off Contract.
- 3.3.2 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions.
- 3.3.3 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services.
- 3.3.4 The Supplier must allocate sufficient resources and appropriate expertise to each Contract.
- 3.3.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- 3.3.6 The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.
- 3.3.7 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

## **4. Pricing and payments**

- 4.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the



## Order Form.

- 4.2 CCS must invoice the Supplier for the Management Charge and the Supplier must pay it using the process in Framework Schedule 5 (Management Charges and Information).
- 4.3 All Charges and the Management Charge:
- (a) exclude VAT, which is payable on provision of a valid VAT invoice; and
  - (b) include all costs connected with the Supply of Deliverables.
- 4.4 The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the Order Form.
- 4.5 A Supplier invoice is only valid if it:
- (a) includes all appropriate references including the Contract reference number and other details reasonably requested by the Buyer;
  - (b) includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any); and
  - (c) does not include any Management Charge (the Supplier must not charge the Buyer in any way for the Management Charge).
- 4.6 The Buyer must accept and process for payment an undisputed Electronic Invoice received from the Supplier.
- 4.7 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.
- 4.8 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, CCS or the Buyer can publish the details of the late payment or non-payment.
- 4.9 If CCS or the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables, then CCS or the Buyer may require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items.
- 4.10 If CCS or the Buyer uses Clause 4.9 then the Framework Prices (and where applicable, the Charges) must be reduced by an agreed amount by using the Variation Procedure.
- 4.11 The Supplier has no right of set-off, counterclaim, discount or abatement unless they are ordered to do so by a court.

## 5. The buyer's obligations to the supplier

- 5.1 If Supplier Non-Performance arises from an Authority Cause:

- (a) neither CCS or the Buyer can terminate a Contract under Clause 10.4.1;
- (b) the Supplier is entitled to reasonable and proven additional expenses and to relief from liability and Deduction under this Contract;
- (c) the Supplier is entitled to additional time needed to make the Delivery; and
- (d) the Supplier cannot suspend the ongoing supply of Deliverables.

5.2 Clause 5.1 only applies if the Supplier:

- (a) gives notice to the Party responsible for the Authority Cause within 10 Working Days of becoming aware;
- (b) demonstrates that the Supplier Non-Performance would not have occurred but for the Authority Cause; and
- (c) mitigated the impact of the Authority Cause.

## **6. Record keeping and reporting**

6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Order Form.

6.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract:

- (a) during the Contract Period;
- (b) for 7 years after the End Date; and
- (c) in accordance with UK GDPR,

including but not limited to the records and accounts stated in the definition of Audit in Joint Schedule 1.

6.3 The Relevant Authority or an Auditor can Audit the Supplier.

6.4 During an Audit, the Supplier must:

- (a) allow the Relevant Authority or any Auditor access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for an Audit; and
- (b) provide information to the Relevant Authority or to the Auditor and reasonable co-operation at their request.

6.5 Where the Audit of the Supplier is carried out by an Auditor, the Auditor shall be entitled to share any information obtained during the Audit with the Relevant Authority.

6.6 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:

- (a) tell the Relevant Authority and give reasons;
  - (b) propose corrective action; and
  - (c) provide a deadline for completing the corrective action.
- 6.7 The Supplier must provide CCS with a Self Audit Certificate supported by an audit report at the end of each Contract Year. The report must contain:
- (a) the methodology of the review;
  - (b) the sampling techniques applied;
  - (c) details of any issues; and
  - (d) any remedial action taken.
- 6.8 The Self Audit Certificate must be completed and signed by an auditor or senior member of the Supplier's management team that is qualified in either a relevant audit or financial discipline.

## **7. Supplier staff**

- 7.1 The Supplier Staff involved in the performance of each Contract must:
- (a) be appropriately trained and qualified;
  - (b) be vetted using Good Industry Practice and the Security Policy; and
  - (c) comply with all conduct requirements when on the Buyer's Premises.
- 7.2 Where a Buyer decides one of the Supplier's Staff is not suitable to work on a contract, the Supplier must replace them with a suitably qualified alternative.
- 7.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 27.
- 7.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.
- 7.5 The Supplier indemnifies CCS and the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

## **8. Rights and protection**

- 8.1 The Supplier warrants and represents that:
- (a) it has full capacity and authority to enter into and to perform each Contract;
  - (b) each Contract is executed by its authorised representative;
  - (c) it is a legally valid and existing organisation incorporated in the place it was formed;
  - (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates

- that might affect its ability to perform each Contract;
- (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under each Contract;
  - (f) it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform each Contract;
  - (g) it is not impacted by an Insolvency Event; and
  - (h) it will comply with each Call-Off Contract.
- 8.2 The warranties and representations in Clauses 2.10 and 8.1 are repeated each time the Supplier provides Deliverables under the Contract.
- 8.3 The Supplier indemnifies both CCS and every Buyer against each of the following:
- (a) wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract; and
  - (b) non-payment by the Supplier of any Tax or National Insurance.
- 8.4 All claims indemnified under this Contract must use Clause 26.
- 8.5 The description of any provision of this Contract as a warranty does not prevent CCS or a Buyer from exercising any termination right that it may have for breach of that clause by the Supplier.
- 8.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify CCS and every Buyer.
- 8.7 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

## **9. Intellectual Property Rights (IPRs)**

- 9.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to both:
- (a) receive and use the Deliverables; and
  - (b) make use of the deliverables provided by a Replacement Supplier.
- 9.2 Any New IPR created under a Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Contract Period.
- 9.3 Where a Party acquires ownership of IPRs incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

- 9.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 9 or otherwise agreed in writing.
- 9.5 If there is an IPR Claim, the Supplier indemnifies CCS and each Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.
- 9.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
- (a) obtain for CCS and the Buyer the rights in Clause 9.1 and 9.2 without infringing any third party IPR; or
  - (b) replace or modify the relevant item with substitutes that do not infringe IPR without adversely affecting the functionality or performance of the Deliverables.
- 9.7 In spite of any other provisions of a Contract and for the avoidance of doubt, award of a Contract by the Buyer and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Supplier acknowledges that any authorisation by the Buyer under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific IPR involved.

## **10. Ending the contract or any subcontract**

### **10.1 Contract Period**

- 10.1.1 The Contract takes effect on the Start Date and ends on the End Date or earlier if required by Law.
- 10.1.2 The Relevant Authority can extend the Contract for the Extension Period by giving the Supplier no less than 3 Months' written notice before the Contract expires.

### **10.2 Ending the contract without a reason**

- 10.2.1 CCS has the right to terminate the Framework Contract at any time without reason by giving the Supplier at least 30 days' notice.
- 10.2.2 Each Buyer has the right to terminate their Call-Off Contract at any time without reason by giving the Supplier not less than 90 days' written notice.

### **10.3 Rectification plan process**

- 10.3.1 If there is a Default, the Relevant Authority may, without limiting its other rights, request that the Supplier provide a Rectification Plan, within 10 working days .
- 10.3.2 When the Relevant Authority receives a requested Rectification Plan it can either:
- (a) reject the Rectification Plan or revised Rectification Plan, giving reasons; or
  - (b) accept the Rectification Plan or revised Rectification Plan (without limiting its rights) and the Supplier must immediately start work on the actions in the Rectification Plan at its own cost,

unless agreed otherwise by the Parties.

10.3.3 Where the Rectification Plan or revised Rectification Plan is rejected, the Relevant Authority:

- (a) must give reasonable grounds for its decision; and
- (b) may request that the Supplier provides a revised Rectification Plan within 5 Working Days.

10.3.4 If the Relevant Authority rejects any Rectification Plan, including any revised Rectification Plan, the Relevant Authority does not have to request a revised Rectification Plan before exercising its right to terminate its Contract under Clause 10.4.3(a).

## **10.4 When CCS or the buyer can end a contract**

10.4.1 If any of the following events happen, the Relevant Authority has the right to immediately terminate its Contract by issuing a Termination Notice to the Supplier:

- (a) there is a Supplier Insolvency Event;
- (b) there is a Default that is not corrected in line with an accepted Rectification Plan;
- (c) the Supplier does not provide a Rectification Plan within 10 days of the request;
- (d) there is any material Default of the Contract;
- (e) there is any material Default of any Joint Controller Agreement relating to any Contract;
- (f) there is a Default of Clauses 2.10, 9, 14, 15, 27, 32 or Framework Schedule 9 (Cyber Essentials) (where applicable) relating to any Contract;
- (g) there is a consistent repeated failure to meet the Performance Indicators in Framework Schedule 4 (Framework Management);
- (h) there is a Change of Control of the Supplier which is not pre-approved by the Relevant Authority in writing;
- (i) if the Relevant Authority discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded; or
- (j) the Supplier or its Affiliates embarrass or bring CCS or the Buyer into disrepute or diminish the public trust in them.

10.4.2 CCS may terminate the Framework Contract if a Buyer terminates a Call-Off Contract for any of the reasons listed in Clause 10.4.1.

10.4.3 If any of the following non-fault based events happen, the Relevant Authority has the right to immediately terminate its Contract by issuing a Termination Notice to the Supplier:

- (a) the Relevant Authority rejects a Rectification Plan;
- (b) there is a Variation which cannot be agreed using Clause 24 (Changing the contract) or resolved using Clause 34 (Resolving disputes);
- (c) if there is a declaration of ineffectiveness in respect of any Variation; or
- (d) the events in 73 (1) (a) of the Regulations happen.

## **10.5 When the supplier can end the contract**

- 10.5.1 The Supplier can issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate a Call-Off Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the annual Contract Value within 30 days of the date of the Reminder Notice.

## **10.6 What happens if the contract ends**

- 10.6.1 Where a Party terminates a Contract under any of Clauses 10.2.1, 10.2.2, 10.4.1, 10.4.2, 10.4.3, 10.5 or 20.2 or a Contract expires all of the following apply:

- (a) The Buyer's payment obligations under the terminated Contract stop immediately.
- (b) Accumulated rights of the Parties are not affected.
- (c) The Supplier must promptly repay to the Buyer any and all Charges the Buyer has paid in advance in respect of Deliverables not provided by the Supplier as at the End Date.
- (d) The Supplier must promptly delete or return the Government Data except where required to retain copies by Law.
- (e) The Supplier must promptly return any of CCS or the Buyer's property provided under the terminated Contract.
- (f) The Supplier must, at no cost to CCS or the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).

- 10.6.2 In addition to the consequences of termination listed in Clause 10.6.1, where the Relevant Authority terminates a Contract under Clause 10.4.1 the Supplier is also responsible for the Relevant Authority's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period.

- 10.6.3 In addition to the consequences of termination listed in Clause 10.6.1, if either the Relevant Authority terminates a Contract under Clause 10.2.1 or 10.2.2 or a Supplier terminates a Call-Off Contract under Clause 10.5:

- (a) the Buyer must promptly pay all outstanding Charges incurred to the Supplier; and
- (b) the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated.

- 10.6.4 In addition to the consequences of termination listed in Clause 10.6.1, where a Party terminates under Clause 20.2 each Party must cover its own Losses.

- 10.6.5 The following Clauses survive the termination or expiry of each Contract: 3.2.10, 4.2, 6, 7.5, 9, 11, 12.2, 14, 15, 16, 17, 18, 31.3, 34, 35 and any Clauses and Schedules which are expressly or by implication intended to continue.

## **10.7 Partially ending and suspending the contract**

- 10.7.1 Where CCS has the right to terminate the Framework Contract it can suspend the Supplier's ability to accept Orders (for any period) and the Supplier cannot enter into any new Call-Off

Contracts during this period. If this happens, the Supplier must still meet its obligations under any existing Call-Off Contracts that have already been signed.

- 10.7.2 Where CCS has the right to terminate a Framework Contract it is entitled to terminate all or part of it.
- 10.7.3 Where the Buyer has the right to terminate a Call-Off Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends a Contract it can provide the Deliverables itself or buy them from a third party.
- 10.7.4 The Relevant Authority can only partially terminate or suspend a Contract if the remaining parts of that Contract can still be used to effectively deliver the intended purpose.
- 10.7.5 The Parties must agree any necessary Variation required by Clause 10.7 using the Variation Procedure, but the Supplier may not either:
- (a) reject the Variation; or
  - (b) increase the Charges, except where the right to partial termination is under Clause 10.2.
- 10.7.6 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under Clause 10.7.

## **10.8 When subcontracts can be ended**

- 10.8.1 At the Buyer's request, the Supplier must terminate any Subcontracts in any of the following events:
- (a) there is a Change of Control of a Subcontractor which is not pre-approved by the Relevant Authority in writing;
  - (b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 10.4; or
  - (c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Relevant Authority.

## **11. How much you can be held responsible for**

- 11.1 Each Party's total aggregate liability in each Contract Year under this Framework Contract (whether in tort, contract or otherwise) is no more than £1,000,000.
- 11.2 Each Party's total aggregate liability in each Contract Year under each Call-Off Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified in the Call-Off Order Form.
- 11.3 No Party is liable to the other for:
- (a) any indirect Losses; or



- (b) Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 11.4 In spite of Clause 11.1 and 11.2, neither Party limits or excludes any of the following:
- (a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
  - (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
  - (c) any liability that cannot be excluded or limited by Law;
  - (d) its obligation to pay the required Management Charge or Default Management Charge.
- 11.5 In spite of Clauses 11.1 and 11.2, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5, 8.3(b), 9.5, 31.3 or Call-Off Schedule 2 (Staff Transfer) of a Contract.
- 11.6 In spite of Clauses 11.1, 11.2 but subject to Clauses 11.3 and 11.4, the Supplier's aggregate liability in each and any Contract Year under each Contract under Clause 14.8 shall in no event exceed the Data Protection Liability Cap.
- 11.7 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with each Contract, including any indemnities.
- 11.8 When calculating the Supplier's liability under Clause 11.1 or 11.2 the following items will not be taken into consideration:
- (a) Deductions; and
  - (b) any items specified in Clauses 11.5 or 11.6.
- 11.9 If more than one Supplier is party to a Contract, each Supplier Party is jointly and severally liable for their obligations under that Contract.

## **12. Obeying the law**

- 12.1 The Supplier must use reasonable endeavours to comply with the provisions of Joint Schedule 5 (Corporate Social Responsibility).
- 12.2 To the extent that it arises as a result of a Default by the Supplier, the Supplier indemnifies the Relevant Authority against any fine or penalty incurred by the Relevant Authority pursuant to Law and any costs incurred by the Relevant Authority in defending any proceedings which result in such fine or penalty.
- 12.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 12.1 and Clauses 27 to 32.

## 13. Insurance

- 13.1 The Supplier must, at its own cost, obtain and maintain the Required Insurances in Joint Schedule 3 (Insurance Requirements) and any Additional Insurances in the Order Form.

## 14. Data protection

- 14.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Joint Schedule 11 (Processing Data).
- 14.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 14.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every 6 Months.
- 14.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.
- 14.5 If at any time the Supplier suspects or has reason to believe that the Government Data provided under a Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Relevant Authority and immediately suggest remedial action.
- 14.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Relevant Authority may either or both:
- (a) tell the Supplier to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Relevant Authority receives notice, or the Supplier finds out about the issue, whichever is earlier; and/or
  - (b) restore the Government Data itself or using a third party.
- 14.7 The Supplier must pay each Party's reasonable costs of complying with Clause 14.6 unless CCS or the Buyer is at fault.
- 14.8 The Supplier:
- (a) must provide the Relevant Authority with all Government Data in an agreed open format within 10 Working Days of a written request;
  - (b) must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
  - (c) must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
  - (d) securely erase all Government Data and any copies it holds when asked to do so by CCS or the Buyer unless required by Law to retain it; and
  - (e) indemnifies CCS and each Buyer against any and all Losses incurred if the Supplier breaches

Clause 14 and any Data Protection Legislation.

## **15. What you must keep confidential**

15.1 Each Party must:

- (a) keep all Confidential Information it receives confidential and secure;
- (b) except as expressly set out in the Contract at Clauses 15.2 to 15.4 or elsewhere in the Contract, not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent; and
- (c) immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

15.2 In spite of Clause 15.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

- (a) where disclosure is required by applicable Law or by a court with the relevant jurisdiction if, to the extent not prohibited by Law, the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
- (b) if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;
- (c) if the information was given to it by a third party without obligation of confidentiality;
- (d) if the information was in the public domain at the time of the disclosure;
- (e) if the information was independently developed without access to the Disclosing Party's Confidential Information;
- (f) on a confidential basis, to its auditors;
- (g) on a confidential basis, to its professional advisers on a need-to-know basis; or
- (h) to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

15.3 In spite of Clause 15.1, the Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Relevant Authority at its request.

15.4 In spite of Clause 15.1, CCS or the Buyer may disclose Confidential Information in any of the following cases:

- (a) on a confidential basis to the employees, agents, consultants and contractors of CCS or the Buyer;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that CCS or the Buyer transfers or proposes to transfer all or any part of its business to;
- (c) if CCS or the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry

- out its public functions;
- (d) where requested by Parliament; or
- (e) under Clauses 4.7 and 16.

15.5 For the purposes of Clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 15.

15.6 Transparency Information is not Confidential Information.

15.7 The Supplier must not make any press announcement or publicise the Contracts or any part of them in any way, without the prior written consent of the Relevant Authority and must take all reasonable steps to ensure that Supplier Staff do not either.

## **16. When you can share information**

16.1 The Supplier must tell the Relevant Authority within 48 hours if it receives a Request For Information.

16.2 Within five (5) Working Days of the Buyer's request the Supplier must give CCS and each Buyer full co-operation and information needed so the Buyer can:

- (a) publish the Transparency Information;
- (b) comply with any Freedom of Information Act (FOIA) request; and/or
- (c) comply with any Environmental Information Regulations (EIR) request.

16.3 The Relevant Authority may talk to the Supplier to help it decide whether to publish information under Clause 16. However, the extent, content and format of the disclosure is the Relevant Authority's decision in its absolute discretion.

## **17. Invalid parts of the contract**

17.1 If any part of a Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it is valid or enforceable.

## **18. No other terms apply**

18.1 The provisions incorporated into each Contract are the entire agreement between the Parties. The Contract replaces all previous statements, agreements and any course of dealings made between the Parties, whether written or oral, in relation to its subject matter. No other provisions apply.

## **19. Other people's rights in a contract**

19.1 No third parties may use the Contracts (Rights of Third Parties) Act 1999 (CRTPA) to enforce

any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

## **20. Circumstances beyond your control**

- 20.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under a Contract while the inability to perform continues, if it both:
- (a) provides a Force Majeure Notice to the other Party; and
  - (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 20.2 Either Party can partially or fully terminate the affected Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.

## **21. Relationships created by the contract**

- 21.1 No Contract creates a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

## **22. Giving up contract rights**

- 22.1 A partial or full waiver or relaxation of the terms of a Contract is only valid if it is stated to be a waiver in writing to the other Party.

## **23. Transferring responsibilities**

- 23.1 The Supplier cannot assign, novate or transfer a Contract or any part of a Contract without the Relevant Authority's written consent.
- 23.2 The Relevant Authority can assign, novate or transfer its Contract or any part of it to any Central Government Body, public or private sector body which performs the functions of the Relevant Authority.
- 23.3 When CCS or the Buyer uses its rights under Clause 23.2 the Supplier must enter into a novation agreement in the form that CCS or the Buyer specifies.
- 23.4 The Supplier can terminate a Contract novated under Clause 23.2 to a private sector body that is experiencing an Insolvency Event.
- 23.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
- 23.6 If CCS or the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:
- (a) their name;

- (b) the scope of their appointment; and
- (c) the duration of their appointment.

## **24. Changing the contract**

- 24.1 Either Party can request a Variation which is only effective if agreed in writing and signed by both Parties.
- 24.2 The Supplier must provide an Impact Assessment either:
- (a) with the Variation Form, where the Supplier requests the Variation; or
  - (b) within the time limits included in a Variation Form requested by CCS or the Buyer.
- 24.3 If the Variation cannot be agreed or resolved by the Parties, CCS or the Buyer can either:
- (a) agree that the Contract continues without the Variation; or
  - (b) terminate the affected Contract, unless in the case of a Call-Off Contract, the Supplier has already provided part or all of the provision of the Deliverables, or where the Supplier can show evidence of substantial work being carried out to provide them; or
  - (c) refer the Dispute to be resolved using Clause 34 (Resolving Disputes).
- 24.4 CCS and the Buyer are not required to accept a Variation request made by the Supplier.
- 24.5 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Framework Prices or the Charges.
- 24.6 If there is a Specific Change in Law or one is likely to happen during the Contract Period the Supplier must give CCS and the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, Framework Prices or a Contract and provide evidence:
- (a) that the Supplier has kept costs as low as possible, including in Subcontractor costs; and
  - (b) of how it has affected the Supplier's costs.
- 24.7 Any change in the Framework Prices or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 24.1 to 24.4.
- 24.8 For 101(5) of the Regulations, if the Court declares any Variation ineffective, the Parties agree that their mutual rights and obligations will be regulated by the terms of the Contract as they existed immediately prior to that Variation and as if the Parties had never entered into that Variation.

## **25. How to communicate about the contract**

- 25.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they are delivered before 5:00pm on a Working Day. Otherwise the

notice is effective on the next Working Day. An email is effective at 9:00am on the first Working Day after sending unless an error message is received.

- 25.2 Notices to CCS must be sent to the CCS Authorised Representative's address or email address in the Framework Award Form.
- 25.3 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Order Form.
- 25.4 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

## **26. Dealing with claims**

- 26.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.
- 26.2 At the Indemnifier's cost the Beneficiary must both:
  - (a) allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and
  - (b) give the Indemnifier reasonable assistance with the claim if requested.
- 26.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which can not be unreasonably withheld or delayed.
- 26.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that does not damage the Beneficiary's reputation.
- 26.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.
- 26.6 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.
- 26.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:
  - (a) the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; or
  - (b) the amount the Indemnifier paid the Beneficiary for the Claim.

## **27. Preventing fraud, bribery and corruption**

- 27.1 The Supplier must not during any Contract Period:

- (a) commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2); or
- (b) do or allow anything which would cause CCS or the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.

27.2 The Supplier must during the Contract Period:

- (a) create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;
- (b) keep full records to show it has complied with its obligations under Clause 27 and give copies to CCS or the Buyer on request; and
- (c) if required by the Relevant Authority, within 20 Working Days of the Start Date of the relevant Contract, and then annually, certify in writing to the Relevant Authority, that they have complied with Clause 27, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.

27.3 The Supplier must immediately notify CCS and the Buyer if it becomes aware of any breach of Clauses 27.1 or 27.2 or has any reason to think that it, or any of the Supplier Staff, has either:

- (a) been investigated or prosecuted for an alleged Prohibited Act;
- (b) been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
- (c) received a request or demand for any undue financial or other advantage of any kind related to a Contract; or
- (d) suspected that any person or Party directly or indirectly related to a Contract has committed or attempted to commit a Prohibited Act.

27.4 If the Supplier notifies CCS or the Buyer as required by Clause 27.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.

27.5 In any notice the Supplier gives under Clause 27.3 it must specify the:

- (a) Prohibited Act;
- (b) identity of the Party who it thinks has committed the Prohibited Act; and
- (c) action it has decided to take.

## **28. Equality, diversity and human rights**

28.1 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:

- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion



- (b) or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and any other requirements and instructions which CCS or the Buyer reasonably imposes related to equality Law.

28.2 The Supplier must take all necessary steps, and inform CCS or the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on a Contract.

## **29. Health and safety**

29.1 The Supplier must perform its obligations meeting the requirements of:

- (a) all applicable Law regarding health and safety; and
- (b) the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier.

29.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they are aware of at the Buyer Premises that relate to the performance of a Contract.

## **30. Environment**

30.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.

30.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

## **31. Tax**

31.1 The Supplier must not breach any Tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. CCS and the Buyer cannot terminate a Contract where the Supplier has not paid a minor Tax or social security contribution.

31.2 Where the Charges payable under a Contract with the Buyer are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify CCS and the Buyer of it within 5 Working Days including:

- (a) the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and
- (b) other information relating to the Occasion of Tax Non-Compliance that CCS and the Buyer may reasonably need.

31.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under a Call-Off Contract, the Supplier

must both:

- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
- (b) indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.

31.4 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:

- (a) the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 31.3, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
- (b) the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
- (c) the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers is not good enough to demonstrate how it complies with Clause 31.3 or confirms that the Worker is not complying with those requirements; and
- (d) the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

## **32. Conflict of interest**

32.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.

32.2 The Supplier must promptly notify and provide details to CCS and each Buyer if a Conflict of Interest happens or is expected to happen.

32.3 CCS and each Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

## **33. Reporting a breach of the contract**

33.1 As soon as it is aware of it the Supplier and Supplier Staff must report to CCS or the Buyer any actual or suspected breach of:

- (a) Law;
- (b) Clause 12.1; or
- (c) Clauses 27 to 32.

- 33.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 33.1 to the Buyer or a Prescribed Person.

## **34. Resolving disputes**

- 34.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.
- 34.2 If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 34.3 to 34.5.
- 34.3 Unless the Relevant Authority refers the Dispute to arbitration using Clause 34.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- (a) determine the Dispute;
  - (b) grant interim remedies; and/or
  - (c) grant any other provisional or protective relief.
- 34.4 The Supplier agrees that the Relevant Authority has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 34.5 The Relevant Authority has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 34.3, unless the Relevant Authority has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 34.4.
- 34.6 The Supplier cannot suspend the performance of a Contract during any Dispute.

## **35. Which law applies**

- 35.1 This Contract and any Disputes arising out of, or connected to it, are governed by English law.

## Joint Schedule 1 (Definitions)

- 1.1 In each Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Joint Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In each Contract, unless the context otherwise requires:
  - 1.3.1 the singular includes the plural and vice versa;
  - 1.3.2 reference to a gender includes the other gender and the neuter;
  - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
  - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - 1.3.5 the words **"including"**, **"other"**, **"in particular"**, **"for example"** and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words **"without limitation"**;
  - 1.3.6 references to **"writing"** include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - 1.3.7 references to **"representations"** shall be construed as references to present facts, to **"warranties"** as references to present and future facts and to **"undertakings"** as references to obligations under the Contract;
  - 1.3.8 references to **"Clauses"** and **"Schedules"** are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
  - 1.3.9 references to **"Paragraphs"** are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided;
  - 1.3.10 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified;
  - 1.3.11 the headings in each Contract are for ease of reference only and shall not affect the interpretation or construction of a Contract;

**Joint Schedule 1 (Definitions)**

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1.3.12 where the Buyer is a Central Government Body it shall be treated as contracting with the Crown as a whole;

1.3.13 any reference in a Contract which immediately before Exit Day was a reference to (as it has effect from time to time):

- (a) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
- (b) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred; and

1.3.14 unless otherwise provided, references to "**Buyer**" shall be construed as including Exempt Buyers; and

1.3.15 unless otherwise provided, references to "**Call-Off Contract**" and "**Contract**" shall be construed as including Exempt Call-off Contracts.

1.4 In each Contract, unless the context otherwise requires, the following words shall have the following meanings:

<b>Achieve"</b>	in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and " <b>Achieved</b> ", " <b>Achieving</b> " and " <b>Achievement</b> " shall be construed accordingly;
<b>Additional Insurances"</b>	insurance requirements relating to a Call-Off Contract specified in the Order Form additional to those outlined in Joint Schedule 3 (Insurance Requirements);
<b>Admin Fee"</b>	means the costs incurred by CCS in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the CCS on: <a href="http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees">http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees</a> ;
<b>Affected Party"</b>	the Party seeking to claim relief in respect of a Force Majeure Event;
<b>Affiliates"</b>	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>Annex"</b>	extra information which supports a Schedule;
<b>Approval"</b>	the prior written consent of the Buyer and " <b>Approve</b> " and " <b>Approved</b> " shall be construed accordingly;
<b>Audit"</b>	the Relevant Authority's right to:

**Joint Schedule 1 (Definitions)**

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	<ul style="list-style-type: none"> <li>a) verify the accuracy of the Charges and any other amounts payable by a Buyer under a Call-Off Contract (including proposed or actual variations to them in accordance with the Contract);</li> <li>b) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;</li> <li>c) verify the Open Book Data;</li> <li>d) verify the Supplier's and each Subcontractor's compliance with the Contract and applicable Law;</li> <li>e) identify or investigate actual or suspected breach of Clauses 27 to 33 and/or Joint Schedule 5 (Corporate Social Responsibility), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Relevant Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;</li> <li>f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;</li> <li>g) obtain such information as is necessary to fulfil the Relevant Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;</li> <li>h) review any books of account and the internal contract management accounts kept by the Supplier in connection with each Contract;</li> <li>i) carry out the Relevant Authority's internal and statutory audits and to prepare, examine and/or certify the Relevant Authority's annual and interim reports and accounts;</li> <li>j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Relevant Authority has used its resources; or</li> <li>k) verify the accuracy and completeness of any Management Information delivered or required by the Framework Contract;</li> </ul>
<b>Auditor"</b>	<ul style="list-style-type: none"> <li>a) the Relevant Authority's internal and external auditors;</li> <li>b) the Relevant Authority's statutory or regulatory auditors;</li> <li>c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</li> <li>d) HM Treasury or the Cabinet Office;</li> <li>e) any party formally appointed by the Relevant Authority to carry out audit or similar review functions; and</li> <li>f) successors or assigns of any of the above;</li> </ul>

<b>Authority"</b>	CCS and each Buyer;
<b>Authority Cause"</b>	any breach of the obligations of the Relevant Authority or any other default, act, omission, negligence or statement of the Relevant Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Relevant Authority is liable to the Supplier;
<b>BACS"</b>	the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;
<b>Beneficiary"</b>	a Party having (or claiming to have) the benefit of an indemnity under this Contract;
<b>Buyer"</b>	the relevant public sector purchaser identified as such in the Order Form;
<b>Buyer Assets"</b>	the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of the Contract;
<b>Buyer Authorised Representative"</b>	the representative appointed by the Buyer from time to time in relation to the Call-Off Contract initially identified in the Order Form;
<b>Buyer Premises"</b>	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);
<b>Call-Off Contract"</b>	the contract between the Buyer and the Supplier (entered into pursuant to the provisions of the Framework Contract), which consists of the terms set out and referred to in the Order Form;
<b>Call-Off Contract Period"</b>	the Contract Period in respect of the Call-Off Contract;
<b>Call-Off Expiry Date"</b>	the scheduled date of the end of a Call-Off Contract as stated in the Order Form;
<b>Call-Off Incorporated Terms"</b>	the contractual terms applicable to the Call-Off Contract specified under the relevant heading in the Order Form;
<b>Call-Off Initial Period"</b>	the Initial Period of a Call-Off Contract specified in the Order Form;
<b>Call-Off Optional Extension Period"</b>	such period or periods beyond which the Call-Off Initial Period may be extended as specified in the Order Form;
<b>Call-Off Procedure"</b>	the process for awarding a Call-Off Contract pursuant to Clause 2 (How the contract works) and Framework Schedule 7 (Call-Off Award Procedure);
<b>Call-Off Special Terms"</b>	any additional terms and conditions specified in the Order Form incorporated into the applicable Call-Off Contract;
<b>Call-Off Start Date"</b>	the date of start of a Call-Off Contract as stated in the Order Form;

<b>Call-Off Tender"</b>	the tender submitted by the Supplier in response to the Buyer's Statement of Requirements following a Further Competition Procedure and set out at Call-Off Schedule 4 (Call-Off Tender);
<b>CCS"</b>	the Minister for the Cabinet Office as represented by Crown Commercial Service, which is an executive agency and operates as a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
<b>CCS Authorised Representative"</b>	the representative appointed by CCS from time to time in relation to the Framework Contract initially identified in the Framework Award Form;
<b>Central Government Body"</b>	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
<b>Change in Law"</b>	any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Start Date;
<b>Change of Control"</b>	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>Charges"</b>	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Call-Off Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Call-Off Contract less any Deductions;
<b>Claim"</b>	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;
<b>Commercially Sensitive Information"</b>	the Confidential Information listed in the Framework Award Form or Order Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
<b>Comparable Supply"</b>	the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
<b>Compliance Officer"</b>	the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
<b>Confidential Information"</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of CCS, the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as



	<b>"confidential"</b> ) or which ought reasonably to be considered to be confidential;
<b>Conflict of Interest"</b>	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to CCS or any Buyer under a Contract, in the reasonable opinion of the Buyer or CCS;
<b>Contract"</b>	either the Framework Contract or the Call-Off Contract, as the context requires;
<b>Contract Period"</b>	the term of either a Framework Contract or Call-Off Contract on and from the earlier of the: a) applicable Start Date; or b) the Effective Date up to and including the applicable End Date;
<b>Contract Value"</b>	the higher of the actual or expected total Charges paid or payable under a Contract where all obligations are met by the Supplier;
<b>Contract Year"</b>	a consecutive period of twelve (12) Months commencing on the Start Date or each anniversary thereof;
<b>Control"</b>	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and <b>"Controlled"</b> shall be construed accordingly;
<b>Controller"</b>	has the meaning given to it in the UK GDPR;
<b>Core Terms"</b>	CCS' terms and conditions for common goods and services which govern how Suppliers must interact with CCS and Buyers under Framework Contracts and Call-Off Contracts;
<b>Costs"</b>	the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables: a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including: i) base salary paid to the Supplier Staff; ii) employer's National Insurance contributions; iii) pension contributions; iv) car allowances; v) any other contractual employment benefits; vi) staff training; vii) work place accommodation; viii) work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and ix) reasonable recruitment costs, as agreed with the Buyer;

	<p>b) costs incurred in respect of Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</p> <p>c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables; and</p> <p>d) Reimbursable Expenses to the extent these have been specified as allowable in the Order Form and are incurred in delivering any Deliverables;</p> <p>but excluding:</p> <p>e) Overhead;</p> <p>f) financing or similar costs;</p> <p>g) maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Call-Off Contract Period whether in relation to Supplier Assets or otherwise;</p> <p>h) taxation;</p> <p>i) fines and penalties;</p> <p>j) amounts payable under Call-Off Schedule 16 (Benchmarking) where such Schedule is used; and</p> <p>k) non-cash items (including depreciation, amortisation, impairments and movements in provisions).</p>
<b>CRTPA"</b>	the Contract Rights of Third Parties Act 1999;
<b>"Cyber Essentials Equivalent"</b>	<p>ISO27001 certification where:</p> <p>a) the Cyber Essentials requirements, at either basic or Plus levels as appropriate, have been included in the scope, and verified as such; and</p> <p>b) the certification body carrying out this verification is approved to issue a Cyber Essentials certificate by one of the accreditation bodies</p> <p>This would be regarded as holding an equivalent standard to Cyber Essentials.</p>
<b>Data Protection Impact Assessment"</b>	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
<b>Data Protection Legislation"</b>	(i) the UK GDPR as amended from time to time; (ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy; (iii) all applicable Law about the Processing of Personal Data and privacy;
<b>Data Protection Liability Cap"</b>	the amount specified in the Framework Award Form;

<b>Data Protection Officer"</b>	has the meaning given to it in the UK GDPR;
<b>Data Subject"</b>	has the meaning given to it in the UK GDPR;
<b>Data Subject Access Request"</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>Deductions"</b>	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under a Call-Off Contract;
<b>Default"</b>	any breach of the obligations of the Supplier (including abandonment of a Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of a Contract and in respect of which the Supplier is liable to the Relevant Authority;
<b>Default Management Charge"</b>	has the meaning given to it in Paragraph 8.1.1 of Framework Schedule 5 (Management Charges and Information);
<b>Delay Payments"</b>	the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
<b>Deliverables"</b>	Goods and/or Services that may be ordered under the Contract including the Documentation;
<b>Delivery"</b>	delivery of the relevant Deliverable or Milestone in accordance with the terms of a Call-Off Contract as confirmed and accepted by the Buyer by either (a) confirmation in writing to the Supplier; or (b) where Call-Off Schedule 13 (Implementation Plan and Testing) is used issue by the Buyer of a Satisfaction Certificate. " <b>Deliver</b> " and " <b>Delivered</b> " shall be construed accordingly;
<b>Disclosing Party"</b>	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 15 (What you must keep confidential);
<b>Dispute"</b>	any claim, dispute or difference (whether contractual or non-contractual) arising out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;
<b>Dispute Resolution Procedure"</b>	the dispute resolution procedure set out in Clause 34 (Resolving disputes);
<b>Documentation"</b>	descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under a Contract as:

**Joint Schedule 1 (Definitions)**

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	<p>l) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables</p> <p>m) is required by the Supplier in order to provide the Deliverables; and/or</p> <p>n) has been or shall be generated for the purpose of providing the Deliverables;</p>
<b>DOTAS"</b>	the Disclosure of Tax Avoidance Schemes rules which require a promoter of Tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;
<b>DPA 2018"</b>	the Data Protection Act 2018;
<b>Due Diligence Information"</b>	any information supplied to the Supplier by or on behalf of the Authority prior to the Start Date;
<b>Effective Date"</b>	the date on which the final Party has signed the Contract;
<b>EIR"</b>	the Environmental Information Regulations 2004;
<b>Electronic Invoice"</b>	an invoice which has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing and which complies with (a) the European standard and (b) any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870;
<b>Employment Regulations"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC;
<b>End Date"</b>	<p>the earlier of:</p> <p>a) the Expiry Date (as extended by any Extension Period exercised by the Relevant Authority under Clause 10.1.2); or</p> <p>b) if a Contract is terminated before the date specified in (a) above, the date of termination of the Contract;</p>
<b>Environmental Policy"</b>	to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer;
<b>Equality and Human Rights Commission"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>Estimated Year 1 Charges"</b>	the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Order Form;

<b>"Estimated Yearly Charges"</b>	<p>means for the purposes of calculating each Party's annual liability under clause 11.2 :</p> <ul style="list-style-type: none"> <li>i) in the first Contract Year, the Estimated Year 1 Charges; or</li> <li>ii) in the any subsequent Contract Years, the Charges paid or payable in the previous Call-off Contract Year; or</li> <li>iii) after the end of the Call-off Contract, the Charges paid or payable in the last Contract Year during the Call-off Contract Period;</li> </ul>
<b>"Exempt Buyer"</b>	<p>a public sector purchaser that is:</p> <ul style="list-style-type: none"> <li>a) eligible to use the Framework Contract; and</li> <li>b) is entering into an Exempt Call-off Contract that is not subject to (as applicable) any of: <ul style="list-style-type: none"> <li>i) the Regulations;</li> <li>ii) the Concession Contracts Regulations 2016 (SI 2016/273);</li> <li>iii) the Utilities Contracts Regulations 2016 (SI 2016/274);</li> <li>iv) the Defence and Security Public Contracts Regulations 2011 (SI 2011/1848);</li> <li>v) the Remedies Directive (2007/66/EC);</li> <li>vi) Directive 2014/23/EU of the European Parliament and Council;</li> <li>vii) Directive 2014/24/EU of the European Parliament and Council;</li> <li>viii) Directive 2014/25/EU of the European Parliament and Council; or</li> <li>ix) Directive 2009/81/EC of the European Parliament and Council;</li> </ul> </li> </ul>
<b>"Exempt Call-off Contract"</b>	<p>the contract between the Exempt Buyer and the Supplier for Deliverables which consists of the terms set out and referred to in the Order Form incorporating and, where necessary, amending, refining or adding to the terms of the Framework Contract;</p>
<b>"Exempt Procurement Amendments"</b>	<p>any amendments, refinements or additions to any of the terms of the Framework Contract made through the Exempt Call-off Contract to reflect the specific needs of an Exempt Buyer to the extent permitted by and in accordance with any legal requirements applicable to that Exempt Buyer;</p>

<b>Existing IPR"</b>	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);
<b>Exit Day"</b>	shall have the meaning in the European Union (Withdrawal) Act 2018;
<b>Expiry Date"</b>	the Framework Expiry Date or the Call-Off Expiry Date (as the context dictates);
<b>Extension Period"</b>	the Framework Optional Extension Period or the Call-Off Optional Extension Period as the context dictates;
<b>"Financial Reports"</b>	<p>a report by the Supplier to the Buyer that:</p> <ul style="list-style-type: none"> <li>a) provides a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;</li> <li>b) provides a true and fair reflection of the costs and expenses to be incurred by Key Subcontractors (as requested by the Buyer);</li> <li>c) is in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Buyer to the Supplier on or before the Start Date for the purposes of the Contract; and</li> </ul> <p>is certified by the Supplier's Chief Financial Officer or Director of Finance;</p>
<b>FOIA"</b>	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>Force Majeure vent"</b>	<p>any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including:</p> <ul style="list-style-type: none"> <li>a) riots, civil commotion, war or armed conflict;</li> <li>b) acts of terrorism;</li> <li>c) acts of government, local government or regulatory bodies;</li> <li>d) fire, flood, storm or earthquake or other natural disaster,</li> </ul> <p>but excluding any industrial dispute relating to the Supplier, the Supplier Staff or any other failure in the Supplier or the Subcontractor's supply chain;</p>
<b>Force Majeure Notice"</b>	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

<b>Framework Award Form"</b>	the document outlining the Framework Incorporated Terms and crucial information required for the Framework Contract, to be executed by the Supplier and CCS;
<b>Framework Contract"</b>	the framework agreement established between CCS and the Supplier in accordance with Regulation 33 by the Framework Award Form for the provision of the Deliverables to Buyers by the Supplier pursuant to the notice published on the Find a Tender Service;
<b>Framework Contract Period"</b>	the period from the Framework Start Date until the End Date of the Framework Contract;
<b>Framework Expiry Date"</b>	the scheduled date of the end of the Framework Contract as stated in the Framework Award Form;
<b>Framework Incorporated Terms"</b>	the contractual terms applicable to the Framework Contract specified in the Framework Award Form;
<b>Framework Optional Extension Period"</b>	such period or periods beyond which the Framework Contract Period may be extended as specified in the Framework Award Form;
<b>Framework Price(s)"</b>	the price(s) applicable to the provision of the Deliverables set out in Framework Schedule 3 (Framework Prices);
<b>Framework Special Terms"</b>	any additional terms and conditions specified in the Framework Award Form incorporated into the Framework Contract;
<b>Framework Start Date"</b>	the date of start of the Framework Contract as stated in the Framework Award Form;
<b>Framework Tender Response"</b>	the tender submitted by the Supplier to CCS and annexed to or referred to in Framework Schedule 2 (Framework Tender);
<b>Further Competition Procedure"</b>	the further competition procedure described in Framework Schedule 7 (Call-Off Award Procedure);
<b>UK GDPR"</b>	the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>General Anti-Abuse rule"</b>	a) the legislation in Part 5 of the Finance Act 2013 and; and b) any future legislation introduced into parliament to counteract Tax advantages arising from abusive arrangements to avoid National Insurance contributions;
<b>General Change in Law"</b>	a Change in Law where the change is of a general legislative nature (including Tax or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>"Gold Contract"</b>	a Call-Off Contract categorised as a Gold contract using the Cabinet Office Contract Tiering Tool;
<b>Goods"</b>	goods made available by the Supplier as specified in Framework Schedule 1 (Specification) and in relation to a Call-Off Contract as specified in the Order Form ;
<b>Good Industry Practice"</b>	standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence

**Joint Schedule 1 (Definitions)**

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	and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>Government"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>Government Data"</b>	the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Authority's Confidential Information, and which: <ul style="list-style-type: none"> <li>i) are supplied to the Supplier by or on behalf of the Authority; or</li> <li>ii) the Supplier is required to generate, process, store or transmit pursuant to a Contract;</li> </ul>
<b>Guarantor"</b>	the person (if any) who has entered into a guarantee in the form set out in Joint Schedule 8 (Guarantee) in relation to this Contract;
<b>Halifax Abuse Principle"</b>	the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HM Government"</b>	Her Majesty's Government;
<b>HMRC"</b>	Her Majesty's Revenue and Customs;
<b>ICT Policy"</b>	the Buyer's policy in respect of information and communications technology, referred to in the Order Form, which is in force as at the Call-Off Start Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
<b>Impact Assessment"</b>	an assessment of the impact of a Variation request by the Relevant Authority completed in good faith, including: <ul style="list-style-type: none"> <li>a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract;</li> <li>b) details of the cost of implementing the proposed Variation;</li> <li>c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Framework Prices/Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;</li> <li>d) a timetable for the implementation, together with any proposals for the testing of the Variation; and</li> <li>e) such other information as the Relevant Authority may reasonably request in (or in response to) the Variation request;</li> </ul>



<b>Implementation Plan"</b>	the plan for provision of the Deliverables set out in Call-Off Schedule 13 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
<b>Indemnifier"</b>	a Party from whom an indemnity is sought under this Contract;
<b>Independent Control"</b>	where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Controller providing it with Personal Data and <b>"Independent Controller"</b> shall be construed accordingly;
<b>Indexation"</b>	the adjustment of an amount or sum in accordance with Framework Schedule 3 (Framework Prices) and the relevant Order Form;
<b>Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;
<b>Information Commissioner"</b>	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
<b>Initial Period"</b>	the initial term of a Contract specified in the Framework Award Form or the Order Form, as the context requires;
<b>Insolvency Event"</b>	<p>with respect to any person, means:</p> <p>(a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:</p> <p>(i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or</p> <p>(ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;</p> <p>(b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</p> <p>(c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;</p> <p>(d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within 14 days;</p>

**Joint Schedule 1 (Definitions)**

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	<p>(e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;</p> <p>(f) where that person is a company, a LLP or a partnership:</p> <p>(i) a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</p> <p>(ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;</p> <p>(iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or</p> <p>(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or</p> <p>(g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;</p>
<b>Installation Works"</b>	all works which the Supplier is to carry out at the beginning of the Call-Off Contract Period to install the Goods in accordance with the Call-Off Contract;
<b>Intellectual Property rights" or "IPR"</b>	<p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
<b>Invoicing Address"</b>	the address to which the Supplier shall invoice the Buyer as specified in the Order Form;
<b>IPR Claim"</b>	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Relevant Authority in the fulfilment of its obligations under a Contract;

**Joint Schedule 1 (Definitions)**

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<b>IR35"</b>	the off-payroll rules requiring individuals who work through their company pay the same income tax and National Insurance contributions as an employee which can be found online at: <a href="https://www.gov.uk/guidance/ir35-find-out-if-it-applies">https://www.gov.uk/guidance/ir35-find-out-if-it-applies</a> ;
<b>"ISO"</b>	International Organization for Standardization;
<b>Joint Controller Agreement"</b>	the agreement (if any) entered into between the Relevant Authority and the Supplier substantially in the form set out in Annex 2 of Joint Schedule 11 ( <i>Processing Data</i> );
<b>Joint Controllers"</b>	where two or more Controllers jointly determine the purposes and means of Processing;
<b>Key Staff"</b>	the individuals (if any) identified as such in the Order Form;
<b>Key Sub-Contract"</b>	each Sub-Contract with a Key Subcontractor;
<b>Key Subcontractor"</b>	any Subcontractor: a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or b) which, in the opinion of CCS or the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Call-Off Contract, and the Supplier shall list all such Key Subcontractors in section 19 of the Framework Award Form and in the Key Subcontractor Section in Order Form;
<b>Know-How"</b>	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the applicable Start Date;
<b>Law"</b>	any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply;
<b>Losses"</b>	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 " <b>Loss</b> " shall be interpreted accordingly;
<b>Lots"</b>	the number of lots specified in Framework Schedule 1 (Specification), if applicable;

<b>Management Charge"</b>	the sum specified in the Framework Award Form payable by the Supplier to CCS in accordance with Framework Schedule 5 (Management Charges and Information);
<b>Management Information" or "MI"</b>	the management information specified in Framework Schedule 5 (Management Charges and Information);
<b>MI Default"</b>	means when two (2) MI Reports are not provided in any rolling six (6) month period
<b>MI Failure"</b>	means when an MI report: a) contains any material errors or material omissions or a missing mandatory field; or b) is submitted using an incorrect MI reporting Template; or c) is not submitted by the reporting date (including where a declaration of no business should have been filed);
<b>MI Report"</b>	means a report containing Management Information submitted to the Authority in accordance with Framework Schedule 5 (Management Charges and Information);
<b>MI Reporting Template"</b>	means the form of report set out in the Annex to Framework Schedule 5 (Management Charges and Information) setting out the information the Supplier is required to supply to the Authority;
<b>Milestone"</b>	an event or task described in the Implementation Plan;
<b>Milestone Date"</b>	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>Month"</b>	a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>National Insurance"</b>	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
<b>New IPR"</b>	a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of a Contract and updates and amendments of these items including (but not limited to) database schema; and/or b) IPR in or arising as a result of the performance of the Supplier's obligations under a Contract and all updates and amendments to the same; but shall not include the Supplier's Existing IPR;
<b>Occasion of Tax on-Compliance"</b>	where: a) any Tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any Tax rules or legislation in any jurisdiction

	<p>that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</p> <p>b) any Tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for Tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion;</p>
<b>Open Book Data "</b>	<p>complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Call-Off Contract, including details and all assumptions relating to:</p> <p>a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Deliverables;</p> <p>b) operating expenditure relating to the provision of the Deliverables including an analysis showing:</p> <p>i) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;</p> <p>ii) staff costs broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each grade;</p> <p>iii) a list of Costs underpinning those rates for each grade, being the agreed rate less the Supplier Profit Margin; and</p> <p>iv) Reimbursable Expenses, if allowed under the Order Form;</p> <p>c) Overheads;</p> <p>d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;</p> <p>e) the Supplier Profit achieved over the Framework Contract Period and on an annual basis;</p> <p>f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</p> <p>g) an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and</p> <p>h) the actual Costs profile for each Service Period;</p>

<b>Order"</b>	means an order for the provision of the Deliverables placed by a Buyer with the Supplier under a Contract;
<b>Order Form"</b>	a completed Order Form Template (or equivalent information issued by the Buyer) used to create a Call-Off Contract;
<b>Order Form Template"</b>	the template in Framework Schedule 6 (Order Form Template and Call-Off Schedules);
<b>Other Contracting Authority"</b>	any actual or potential Buyer under the Framework Contract;
<b>Overhead"</b>	those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs";
<b>Parliament"</b>	takes its natural meaning as interpreted by Law;
<b>Party"</b>	in the context of the Framework Contract, CCS or the Supplier, and in the in the context of a Call-Off Contract the Buyer or the Supplier. <b>"Parties"</b> shall mean both of them where the context permits;
<b>Performance Indicators" or "PIs"</b>	the performance measurements and targets in respect of the Supplier's performance of the Framework Contract set out in Framework Schedule 4 (Framework Management);
<b>Personal Data"</b>	has the meaning given to it in the UK GDPR;
<b>Personal Data reach"</b>	has the meaning given to it in the UK GDPR;
<b>Personnel"</b>	all directors, officers, employees, agents, consultants and suppliers of a Party and/or of any Subcontractor and/or Subprocessor engaged in the performance of its obligations under a Contract;
<b>Prescribed Person"</b>	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a> ;
<b>Processing"</b>	has the meaning given to it in the UK GDPR;
<b>Processor"</b>	has the meaning given to it in the UK GDPR;
<b>Progress Meeting"</b>	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
<b>Progress Meeting Frequency"</b>	the frequency at which the Supplier shall conduct a Progress Meeting in accordance with Clause 6.1 as specified in the Order Form;
<b>Progress Report"</b>	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;

<b>Progress Report Frequency"</b>	the frequency at which the Supplier shall deliver Progress Reports in accordance with Clause 6.1 as specified in the Order Form;
<b>Prohibited Acts"</b>	<p>a) to directly or indirectly offer, promise or give any person working for or engaged by a Buyer or any other public body a financial or other advantage to:</p> <ul style="list-style-type: none"> <li>i) induce that person to perform improperly a relevant function or activity; or</li> <li>ii) reward that person for improper performance of a relevant function or activity;</li> </ul> <p>b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with each Contract; or</p> <p>c) committing any offence:</p> <ul style="list-style-type: none"> <li>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</li> <li>ii) under legislation or common law concerning fraudulent acts; or</li> <li>iii) defrauding, attempting to defraud or conspiring to defraud a Buyer or other public body; or</li> </ul> <p>d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
<b>Protective Measures"</b>	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 the such measures adopted by it including those outlined in Framework Schedule 9 (Cyber Essentials Scheme), if applicable, in the case of the Framework Contract or Call-Off Schedule 9 (Security), if applicable, in the case of a Call-Off Contract.
<b>"Rating Agency"</b>	as defined in the Framework Award Form or the Order Form, as the context requires;
<b>Recall"</b>	a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the right IPR rights) that might endanger health or hinder performance;
<b>Recipient Party"</b>	the Party which receives or obtains directly or indirectly Confidential Information;
<b>Rectification Plan"</b>	the Supplier's plan (or revised plan) to rectify it's breach using the template in Joint Schedule 10 (Rectification Plan) which shall include:

	<p>a) full details of the Default that has occurred, including a root cause analysis;</p> <p>b) the actual or anticipated effect of the Default; and</p> <p>c) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable);</p>
<b>Rectification Plan Process"</b>	the process set out in Clause 10.3.1 to 10.3.4 (Rectification Plan Process);
<b>Regulations"</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);
<b>Reimbursable Expenses"</b>	<p>the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:</p> <p>a) travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and</p> <p>b) subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;</p>
<b>Relevant Authority"</b>	the Authority which is party to the Contract to which a right or obligation is owed, as the context requires;
<b>Relevant Authority's Confidential Information"</b>	<p>a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Relevant Authority (including all Relevant Authority Existing IPR and New IPR);</p> <p>b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Relevant Authority's attention or into the Relevant Authority's possession in connection with a Contract; and</p> <p>information derived from any of the above;</p>
<b>Relevant Requirements"</b>	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
<b>Relevant Tax Authority"</b>	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>Reminder Notice"</b>	a notice sent in accordance with Clause 10.5 given by the Supplier to the Buyer providing notification that payment has not been received on time;



<b>Replacement Deliverables"</b>	any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables following the Call-Off Expiry Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>Replacement Subcontractor"</b>	a Subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Subcontractor of any such Subcontractor);
<b>Replacement Supplier"</b>	any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;
<b>Request For Information"</b>	a request for information or an apparent request relating to a Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
<b>Required Insurances"</b>	the insurances required by Joint Schedule 3 (Insurance Requirements) or any additional insurances specified in the Order Form;
<b>"RTI"</b>	Real Time Information;
<b>Satisfaction Certificate"</b>	the certificate (materially in the form of the document contained in of Part B of Call-Off Schedule 13 (Implementation Plan and Testing) or as agreed by the Parties where Call-Off Schedule 13 is not used in this Contract) granted by the Buyer when the Supplier has met all of the requirements of an Order, Achieved a Milestone or a Test;
<b>Security Management Plan"</b>	the Supplier's security management plan prepared pursuant to Call-Off Schedule 9 (Security) (if applicable);
<b>Security Policy"</b>	the Buyer's security policy, referred to in the Order Form, in force as at the Call-Off Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
<b>Self Audit Certificate"</b>	means the certificate in the form as set out in Framework Schedule 8 (Self Audit Certificate);
<b>Serious Fraud Office"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>Service Levels"</b>	any service levels applicable to the provision of the Deliverables under the Call Off Contract (which, where Call Off Schedule 14 (Service Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule);
<b>Service Period"</b>	has the meaning given to it in the Order Form;

<b>Services"</b>	services made available by the Supplier as specified in Framework Schedule 1 (Specification) and in relation to a Call-Off Contract as specified in the Order Form;
<b>Service Transfer"</b>	any transfer of the Deliverables (or any part of the Deliverables), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;
<b>Service Transfer Date"</b>	the date of a Service Transfer;
<b>Sites"</b>	any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: a) the Deliverables are (or are to be) provided; or b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;
<b>SME"</b>	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;
<b>Special Terms"</b>	any additional Clauses set out in the Framework Award Form or Order Form which shall form part of the respective Contract;
<b>Specific Change in Law"</b>	a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start Date;
<b>Specification"</b>	the specification set out in Framework Schedule 1 (Specification), as may, in relation to a Call-Off Contract, be supplemented by the Order Form;
<b>Standards"</b>	any: a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; b) standards detailed in the specification in Schedule 1 (Specification); c) standards detailed by the Buyer in the Order Form or agreed between the Parties from time to time; d) relevant Government codes of practice and guidance applicable from time to time;
<b>Start Date"</b>	in the case of the Framework Contract, the date specified on the Framework Award Form, and in the case of a Call-Off Contract, the date specified in the Order Form;

<b>Statement of requirements"</b>	a statement issued by the Buyer detailing its requirements in respect of Deliverables issued in accordance with the Call-Off Procedure;
<b>Storage Media"</b>	the part of any device that is capable of storing and retrieving data;
<b>Sub-Contract"</b>	any contract or agreement (or proposed contract or agreement), other than a Call-Off Contract or the Framework Contract, pursuant to which a third party: a) provides the Deliverables (or any part of them); b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);
<b>Subcontractor"</b>	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
<b>Sub-processor"</b>	any third Party appointed to process Personal Data on behalf of that Processor related to a Contract;
<b>Supplier"</b>	the person, firm or company identified in the Framework Award Form;
<b>Supplier Assets"</b>	all assets and rights used by the Supplier to provide the Deliverables in accordance with the Call-Off Contract but excluding the Buyer Assets;
<b>Supplier Authorised representative"</b>	the representative appointed by the Supplier named in the Framework Award Form, or later defined in a Call-Off Contract;
<b>Supplier's confidential information"</b>	a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier; b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with a Contract; c) Information derived from any of (a) and (b) above;
<b>"Supplier's Contract Manager"</b>	the person identified in the Order Form appointed by the Supplier to oversee the operation of the Call-Off Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;
<b>Supplier Equipment"</b>	the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Call-Off Contract;
<b>Supplier Marketing contact"</b>	shall be the person identified in the Framework Award Form;

<b>Supplier Non-performance"</b>	where the Supplier has failed to: a) Achieve a Milestone by its Milestone Date; b) provide the Goods and/or Services in accordance with the Service Levels ; and/or c) comply with an obligation under a Contract;
<b>Supplier Profit"</b>	in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) in respect of a Call-Off Contract for the relevant period;
<b>Supplier Profit Margin"</b>	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
<b>Supplier Staff"</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under a Contract;
<b>Supporting Documentation"</b>	sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under the Call-Off Contract detailed in the information are properly payable;
<b>Tax"</b>	a) all forms of taxation whether direct or indirect; b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction; c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above, in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;
<b>Termination Notice"</b>	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate a Contract on a specified date and setting out the grounds for termination;
<b>Test Issue"</b>	any variance or non-conformity of the Deliverables from their requirements as set out in a Call-Off Contract;
<b>Test Plan"</b>	a plan: a) for the Testing of the Deliverables; and b) setting out other agreed criteria related to the achievement of Milestones;

<b>Tests "</b>	any tests required to be carried out pursuant to a Call-Off Contract as set out in the Test Plan or elsewhere in a Call-Off Contract and <b>"Tested"</b> and <b>"Testing"</b> shall be construed accordingly;
<b>Third Party IPR"</b>	Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
<b>Transferring Supplier Employees"</b>	those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date;
<b>Transparency information"</b>	the Transparency Reports and the content of a Contract, including any changes to this Contract agreed from time to time, except for –  (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Relevant Authority; and  (ii) Commercially Sensitive Information;
<b>Transparency eports"</b>	the information relating to the Deliverables and performance of the Contracts which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Call-Off Schedule 1 (Transparency Reports);
<b>"TUPE"</b>	Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive
<b>"United Kingdom"</b>	the country that consists of England, Scotland, Wales, and Northern Ireland
<b>Variation"</b>	any change to a Contract;
<b>Variation Form"</b>	the form set out in Joint Schedule 2 (Variation Form);
<b>Variation Procedure"</b>	the procedure set out in Clause 24 (Changing the contract);
<b>VAT"</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>VCSE"</b>	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
<b>Worker"</b>	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Deliverables;
<b>Working Day"</b>	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Order Form;

<b>Work Day"</b>	Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day; and
<b>Work Hours"</b>	the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks.

## Joint Schedule 2 (Variation Form)

This form is to be used in order to change a contract in accordance with Clause 24 (Changing the Contract)

Contract Details		
This variation is between:	<b>[delete]</b> as applicable: CCS / Buyer] (" <b>CCS</b> " " <b>the Buyer</b> ") And <b>[insert]</b> name of Supplier] (" <b>the Supplier</b> ")	
Contract name:	<b>[insert]</b> name of contract to be changed] (" <b>the Contract</b> ")	
Contract reference number:	<b>[insert]</b> contract reference number]	
Details of Proposed Variation		
Variation initiated by:	<b>[delete]</b> as applicable: CCS/Buyer/Supplier]	
Variation number:	<b>[insert]</b> variation number]	
Date variation is raised:	<b>[insert]</b> date]	
Proposed variation		
Reason for the variation:	<b>[insert]</b> reason]	
An Impact Assessment shall be provided within:	<b>[insert]</b> number] days	
Impact of Variation		
Likely impact of the proposed variation:	<b>[Supplier to insert]</b> assessment of impact]	
Outcome of Variation		
Contract variation:	This Contract detailed above is varied as follows: <ul style="list-style-type: none"><li><b>[CCS/Buyer to insert]</b> original Clauses or Paragraphs to be varied and the changed clause]</li></ul>	
Financial variation:	Original Contract Value:	£ <b>[insert]</b> amount]
	Additional cost due to variation:	£ <b>[insert]</b> amount]
	New Contract value:	£ <b>[insert]</b> amount]

1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by **[delete]** as applicable: CCS / Buyer]
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

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

Signature .....

Date .....

Name (in Capitals) .....

Address .....

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

Date .....

Name (in Capitals) .....

Address .....





## Joint Schedule 3 (Insurance Requirements)

### 1. The insurance you need to have

- 1.1 The Supplier shall take out and maintain, or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule, any additional insurances required under a Call-Off Contract (specified in the applicable Order Form) ("Additional Insurances") and any other insurances as may be required by applicable Law (together the "Insurances"). The Supplier shall ensure that each of the Insurances is effective no later than:
  - 1.1.1 the Framework Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
  - 1.1.2 the Call-Off Contract Effective Date in respect of the Additional Insurances.
- 1.2 The Insurances shall be:
  - 1.2.1 maintained in accordance with Good Industry Practice;
  - 1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
  - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
  - 1.2.4 maintained for at least six (6) years after the End Date.
- 1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Relevant Authority shall be indemnified in respect of claims made against the Relevant Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

### 2. How to manage the insurance

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
  - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
  - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

### **3. What happens if you aren't insured**

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Relevant Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

### **4. Evidence of insurance you must provide**

- 4.1 The Supplier shall upon the Start Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Relevant Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

### **5. Making sure you are insured to the required amount**

- 5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Supplier shall notify the Relevant Authority and provide details of its proposed solution for maintaining the minimum limit of indemnity.

### **6. Cancelled Insurance**

- 6.1 The Supplier shall notify the Relevant Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Relevant Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

### **7. Insurance claims**

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or each Contract for which it may be entitled to claim under any of the Insurances. In the event that the Relevant Authority receives a claim relating to or arising out of a Contract or the Deliverables, the Supplier shall co-operate with the Relevant Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

### **Joint Schedule 3 (Insurance Requirements)**

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- 7.2 Except where the Relevant Authority is the claimant party, the Supplier shall give the Relevant Authority notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to Paragraph 5.1 relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Relevant Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Relevant Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

## **ANNEX: REQUIRED INSURANCES**

- 1.** The Supplier shall hold the following [standard] insurance cover from the Framework Start Date in accordance with this Schedule:

1.1 Professional indemnity insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000) – all Lots.

1.2 Public liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000) – all Lots.

1.3 Employers' liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000) – all Lots.

1.4 Product liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000) – all Lots.



## Joint Schedule 4 (Commercially Sensitive Information)

### 1. What is the Commercially Sensitive Information?

- 1.1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Order Form (which shall be deemed incorporated into the table below).
- 1.3 Without prejudice to the Relevant Authority's obligation to disclose Information in accordance with FOIA or Clause 16 (When you can share information), the Relevant Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
1	15 July 2025	Pricing information in Call-Off Schedule 5 (Pricing)	Contract duration





# Joint Schedule 5 (Corporate Social Responsibility)

## Definitions

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

<b>"First Tier"</b>	the brand company;
<b>"Second Tier"</b>	the final assembly factory linked to the procured product model; and
<b>"Third Tier"</b>	component production factory linked to the procured product model for strategic components, such as CPU, memory, main logic board, display, battery, power supply unit etc.

## 1. What we expect from our Suppliers

- 1.1 In September 2017, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government.  
([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/646497/2017-09-13\\_Official\\_Sensitive\\_Supplier\\_Code\\_of\\_Conduct\\_September\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf))
- 1.2 CCS expects its suppliers and subcontractors to meet the standards set out in that Code. In addition, CCS expects its suppliers and subcontractors to comply with the standards set out in this Schedule.
- 1.3 The Supplier acknowledges that the Buyer may have additional requirements in relation to corporate social responsibility. The Buyer expects that the Supplier and its Subcontractors will comply with such corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time.

## 2. Equality and Accessibility

- 2.1 In addition to legal obligations, the Supplier shall support CCS and the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under each Contract in a way that seeks to:
  - 2.1.1 eliminate discrimination, harassment or victimisation of any kind; and
  - 2.1.2 advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

### 3. Modern Slavery, Child Labour and Inhumane Treatment

- 3.1 The Supplier shall fully cooperate with the appointed independent monitoring organisation (which is subject to change at the sole discretion of the Authority) to monitor the rights of workers in electronics supply chains.
  - 3.1.1 The current monitoring organisation is: - Electronics Watch a not-for-profit non-governmental organisation incorporated under Dutch law (No. 62721445 in the Dutch Chamber of Commerce Trade Register). Electronics Watch
- 3.2 For any hardware procured through this Framework Agreement RM6098, the Supplier shall disclose in the prescribed format (see Annex 1) details of its First Tier and/or Second Tier and/or Third Tier supply chains (including country and city factory locations). The Authority will provide this information to Electronics Watch to ensure supply chain labour conditions can be assessed.
- 3.3 The Supplier:
  - 3.3.1 shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
  - 3.3.2 shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identify papers with the Employer and shall be free to leave their employer after reasonable notice;
  - 3.3.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
  - 3.3.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world.
  - 3.3.5 shall make reasonable enquiries to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world.
  - 3.3.6 shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
  - 3.3.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
  - 3.3.8 shall prepare and deliver to CCS, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Paragraph 3;

- 3.3.9 shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- 3.3.10 shall not use or allow child or slave labour to be used by its Subcontractors;
- 3.3.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to CCS, the Buyer and Modern Slavery Helpline.

**"Helpline"** means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

#### **4. Income Security**

##### **4.1 The Supplier shall:**

- 4.1.1 ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- 4.1.2 ensure that all Supplier Staff are provided with written and understandable Information about their employment conditions in respect of wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;
- 4.1.3 not make deductions from wages:
  - (a) as a disciplinary measure
  - (b) except where permitted by law; or
  - (c) without expressed permission of the worker concerned;
- 4.1.4 record all disciplinary measures taken against Supplier Staff; and
- 4.1.5 ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.

## **5. Working Hours**

5.1 The Supplier shall:

- 5.1.1 ensure that the working hours of Supplier Staff comply with national laws, and any collective agreements;
- 5.1.2 that the working hours of Supplier Staff, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;
- 5.1.3 ensure that use of overtime used responsibly, taking into account:
  - the extent;
  - frequency; and
  - hours worked;

by individuals and by the Supplier Staff as a whole;

5.2 The total hours worked in any seven day period shall not exceed 60 hours, except where covered by Paragraph 5.3 below.

5.3 Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:

- 5.3.1 this is allowed by national law;
- 5.3.2 this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;  
appropriate safeguards are taken to protect the workers' health and safety; and
- 5.3.3 the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.

5.4 All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

## **6. Sustainability**

6.1 The supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

6.2 The Supplier shall use reasonable endeavours to avoid the use of paper and card in carrying out its obligations under this Contract. Where unavoidable under reasonable endeavours, the Supplier shall ensure that any paper or card deployed in the performance of the Services consists of

**Joint Schedule 5 (Corporate Social Responsibility)**  
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one hundred percent (100%) recycled content and used on both sides where feasible to do so

- 6.3 The Supplier shall complete and provide CCS with a Carbon Reduction Plan.
- 6.4 The Supplier shall progress towards carbon net zero during the lifetime of the framework.

## Call-Off Schedule 4 (Call Off Tender)

### Social Value Equal Opportunity Question

#### Question 1 (750 words):

We foster an inclusive work environment that promotes engagement and wellbeing as part of our People Promise, with this tool we aim to enable and support colleagues to do their role and provide access to the best tools and training available to them. As we attract and retain talent, having sight of the social landscape is crucial. The working conditions and environment are imperative to good wellbeing and psychological safety.

Demonstrate how you will create working conditions which promote employee retention in the contract workforce including the actions taken to support health and wellbeing, including physical and mental health enabling them to be at their best throughout the contract.

Softcat recognises that a dynamic workforce advances different ideas and ways of thinking to understand better and anticipate customer needs/ensure future growth, as such, we have specific ambitions in increasing the diversity of our workforce. Softcat maintains a 'Diversity in Recruitment Policy' in its commitment to being an inclusive employer, enabling Softcat to focus on talent acquisition and selection to promote greater diversity in the tech sector.

Softcat has worked to help people managers understand better how they can support their staff and further support employees in managing their disabilities within the workplace.

We prioritise the mental well-being of our employees through a comprehensive support system, supportive and inclusive workplace, where mental health is valued, and employees feel empowered. As such, we offer:

- Mental Health First Aiders: Trained individuals who provide crucial support and promote mental health awareness.
- Mental Health Training for Managers: Training sessions to increase awareness, reduce stigma, and improve support for mental health concerns.
- On Time to Talk Day in February, we actively encourage positive discussions about mental health among our employees, friends, families, and communities. This initiative, launched by Time to Change in 2014, aims to end mental health stigma and discrimination.
- Celebrate World Mental Health Day each October, a worldwide initiative aimed at raising awareness about mental health and the importance of mental well-being. Staff are invited to a range of national and local events .
- We also host our Mental Health Awareness Week annually to highlight the importance of mental health and the support available at Softcat. We organise various activities, such as:
  - Personal Stories sessions, where employees share their challenges and support each other.
  - Mental Health First Aiders profiles, to encourage employees to seek help.
  - Virtual Informative sessions, covering topics like resilience, anxiety, and mind-body connection, with guest speakers like Jonny Wilkinson.
  - Workload Management Drop-in sessions, to help employees manage their tasks and priorities.
- Employee Assistance Programme, TELUS Health, designed to enhance the support available to our employees, The app is available directly through Teams to eliminate barriers for employees and encourage them to seek help as soon as they need it. The programme providing confidential support.

We know happy employees are a prerequisite for happy, satisfied customers, so we focus on investing in and supporting our staff. Our most recent employee satisfaction survey resulted in a score of 92% satisfaction in 2023 and Softcat has been officially certified as a Great Place to Work® in the UK and Ireland for 2024. We're extremely proud of our team and we're committed to finding and recruiting people who embody our core values.

This year our headcount passed 2,600 employees. We are working harder than ever to make every employee feel part of a connected team at Softcat. Our training equips employees with role specific knowledge, which enables them to

provide innovative solutions for our customers. Our culture focuses on both teamwork and on celebrating individual contributions, ranging from our employee of the month awards to team of the year awards.

Softcat has been officially certified as a Great Place to Work® in the UK and Ireland for 2024, thanks to the positive feedback from our employees. In the recent Great Place to Work survey, 98% of our staff feel Softcat is a ‘safe place to work’.

We have also been recognised in several other areas, including:

- #1 [Best Workplaces for Women 2024](#) (Super Large category)
- #1 [Best Workplaces for Development 2024](#) (Super Large category)
- #5 Best Workplaces 2024 (Super Large category)
- #5 Best Workplaces for Wellbeing 2024 (Super Large category)
- [#47 Fortune 100 Best Companies to Work For in Europe 2024](#)
- [CRN Cultural Inclusion Company of the Year](#)
- 91% of our employees’ rate Softcat as a great place to work, a significant 37% above national average, along with receiving very high scores across five categories, as shown below



Softcat collects and publishes retention rates within relevant reports, including the return of new mothers. Last financial year, we had 100% return from maternity leave. We offer flexible working to support mothers and enable them to flourish within their roles.

We’re very proud of the people and culture at Softcat – and we’re firmly focused on making sure employees are happy with working life. Softcat recognises that the health of our employees is a growing issue in modern life and acknowledge our part in managing issues in the business so as to minimise any potential for increasing the psychological and physical burdens on workers.

## Call-Off Schedule 5 (Pricing Details)

Table 1: Charges Schedule

Items to be Covered 15/07/2025 - 14/07/2028	Price per item (12 months)	Volume	Total (exc. VAT)
<u>DDAT</u>			
User Licences Year 1	██████████	█	██████████
Professional Service: Activate	██████████	█	██████████
User Licences Year 2	██████████	█	██████████
User Licences Year 3	██████████	█	██████████
		██████████	██████████
<u>TDS</u>			
User Licences Year 1	██████████	█	██████████
Professional Service: Activate	██████████	█	██████████
User Licences Year 2	██████████	█	██████████
User Licences Year 3	██████████	█	██████████
		██████████	██████████
		██████████	██████████
	████████████████████		██████████
<b>TOTAL ORDER VALUE (including growth up to 150 licences)</b>			<b>£89,854.58</b>

The Charges, as detailed above, shall operate on a fixed-price basis.

Payment shall be upfront in advance via BACS.

For the avoidance of doubt, the NHSBSA intends to purchase 120 Lucid Suite licences at the outset of the Call-Off Contract. The pricing model also accounts for a potential increase of up to 30 additional licences during the contract period, bringing the total to 150.

All units are priced at the same rate per licence per annum, ensuring price consistency and budget predictability for the Authority. The Total Contract Value reflects the full cost of all 150 licences. If growth is achieved and the Customer requires the additional licences, they may submit a purchase order under the terms of this Contract. Any additional licences purchased during the contract term should be charged on a pro rata basis to align with the end date of the current term.



# Call-Off Schedule 20 (Call-Off Specification)

This Schedule sets out the characteristics of the Deliverables that the Supplier will be required to make to the Buyers under this Call-Off Contract

## Introduction

The NHS Business Services Authority (NHSBSA) is a Special Health Authority and an Arm's Length Body of the Department of Health and Social Care (DHSC). Our mission is to deliver business service excellence to the NHS, helping people live longer, healthier lives.

We aim to be the national provider of at-scale business services for the health and social care system—transforming and delivering these services to maximise efficiency and meet customer expectations.

We oversee over £100 billion of NHS expenditure annually and deliver a wide range of national services, including:

- Prescription and dental processing
- Issuing prescription exemption certificates
- Administering the NHS Pension Scheme
- Supporting NHS recruitment and payroll through our 'Hire to Retire' portfolio, including NHS Jobs and the Electronic Staff Record (ESR)
- Delivering student services for healthcare education funding
- Managing overseas healthcare services
- Administering the Vaccine Damage Payment Scheme
- Providing data and analytics to support national health and care initiatives

We are committed to using digital innovation and data-driven insights to simplify access to our services and support national priorities that improve patient outcomes.

For a full overview of our services, please visit: [www.nhsbsa.nhs.uk](http://www.nhsbsa.nhs.uk).

We are actively seeking innovative, responsible suppliers and partners to help us deliver our strategy. We look forward to your support and engagement.

## Background

The NHSBSA is seeking to renew 120 Lucid Suite licences for a period of 48 months.

The NHSBSA currently holds an active contract for the provision of these licences, which is scheduled to expire on 14 July 2025.

Suppliers are invited to submit proposals for the renewal of these licences.

## Scope

- Renewal of 120 Lucid Suite licences with growth up to 150 licences should an additional 30 be required during the contract period.
- 48-month contract term split into a 36-month initial term [REDACTED]  
[REDACTED]
- Procurement Route: Evaluation via the Crown Commercial Services Technology Products and Associated Services 2 framework
- Price and Social Value responses to be provided

## Joint Schedule 10 (Rectification Plan)

Request for [Revised] Rectification Plan			
Details of the Default:	[Guidance: Explain the Default, with clear schedule and clause references as appropriate]		
Deadline for receiving the [Revised] Rectification Plan:	[add date (minimum 10 days from request)]		
Signed by [CCS/Buyer] :		Date:	
Supplier [Revised] Rectification Plan			
Cause of the Default	[add cause]		
Anticipated impact assessment:	[add impact]		
Actual effect of Default:	[add effect]		
Steps to be taken to rectification:	<b>Steps</b>	<b>Timescale</b>	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[...]	[date]	
Timescale for complete Rectification of Default	[X] Working Days		
Steps taken to prevent recurrence of Default	<b>Steps</b>	<b>Timescale</b>	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[...]	[date]	
Signed by the Supplier:		Date:	
Review of Rectification Plan [CCS/Buyer]			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for Rejection (if applicable)	[add reasons]		

**Joint Schedule 11 (Processing Data)**  
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Signed by [CCS/Buyer]		Date:	
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## Joint Schedule 11 (Processing Data)

### Definitions

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

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

### Status of the Controller

2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:

- (a) “Controller” in respect of the other Party who is “Processor”;
- (b) “Processor” in respect of the other Party who is “Controller”;
- (c) “Joint Controller” with the other Party;
- (d) “Independent Controller” of the Personal Data where the other Party is also “Controller”,

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

### Where one Party is Controller and the other Party its Processor

3. Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller and may not otherwise be determined by the Processor.
4. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
5. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
  - (a) a systematic description of the envisaged Processing and the purpose of the Processing;
  - (b) an assessment of the necessity and proportionality of the Processing in relation to the Deliverables;

## Joint Schedule 11 (Processing Data)

Crown Copyright 2023

- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
6. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
- (a) Process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*) and shall not Process the Personal Data for any other purpose, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, including in the case of the Supplier the measures set out in Clause 14.3 of the Core Terms, which the Controller may reasonably reject. In the event of the Controller reasonably rejecting Protection Measures put in place by the Processor, the Processor must propose alternative Protective Measures to the satisfaction of the Controller. Failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures. Protective Measures must take account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that:
    - (i) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*));
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Processor's duties under this Joint Schedule 11, Clauses 14 (*Data protection*), 15 (*What you must keep confidential*) and 16 (*When you can share information*) of the Core Terms;
      - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
      - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
      - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;

## Joint Schedule 11 (Processing Data)

Crown Copyright 2023

- (d) not transfer, Process, or otherwise make available for Processing, Personal Data outside of the UK unless the prior written consent of the Controller has been obtained (such consent may be withheld or subject to such conditions as the Customer considers fit at the Customer's absolute discretion) and the following conditions are fulfilled:
    - (i) the destination country has been recognised as adequate by the UK Government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018;
    - (ii) Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 DPA 2018) as determined by the Controller;
    - (iii) the Data Subject has enforceable rights and effective legal remedies;
    - (iv) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
    - (v) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data;

if any of the mechanisms relied on under paragraph 6(d) in respect of any transfers of Personal Data by the Processor at any time ceases to be valid, the Processor shall, if possible, implement an alternative mechanism to ensure compliance with the Data Protection Legislation. If no alternative mechanism is available, the Controller and the Processor shall work together in good faith to determine the appropriate measures to be taken, taking into account any relevant guidance and accepted good industry practice. The Controller reserves the right to require the Processor to cease any affected transfers if no alternative mechanism to ensure compliance with Data Protection Legislation is reasonably available; and
  - (e) at the written direction, and absolute discretion, of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
7. Subject to paragraph 8 of this Joint Schedule 11, the Processor shall notify the Controller immediately if in relation to Processing Personal Data under or in connection with the Contract it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;

## Joint Schedule 11 (Processing Data)

Crown Copyright 2023

- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
8. The Processor's obligation to notify under paragraph 7 of this Joint Schedule 11 shall include the provision of further information to the Controller, as details become available.
9. Taking into account the nature of the Processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 7 of this Joint Schedule 11 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Data Loss Event; and/or
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
10. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Joint Schedule 11. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the Processing is not occasional;
  - (b) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - (c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.



## **Joint Schedule 11 (Processing Data)**

Crown Copyright 2023

11. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
12. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
13. Before allowing any Sub-processor to Process any Personal Data related to the Contract, the Processor must:
  - (a) notify the Controller in writing of the intended Sub-processor and Processing that will be undertaken by the Sub-processor;
  - (b) obtain the written consent of the Controller (such consent may be withheld or subject to such conditions as the Controller considers fit at the Controller's absolute discretion);
  - (c) enter into a written legally binding agreement with the Sub-processor which give effect to the terms set out in this Joint Schedule 11 such that they apply to the Sub-processor, prior to any Personal Data being transferred to or accessed by the Sub-processor; and
  - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
14. Any Processing by a Sub-processor or transfer of Personal Data to a Sub-processor permitted by the Controller shall not relieve the Processor from any of its liabilities, responsibilities and obligations to the Controller under this Joint Schedule 11, and the Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
15. The Relevant Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Joint Schedule 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
16. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Relevant Authority may on not less than thirty (30) Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

### **Where the Parties are Joint Controllers of Personal Data**

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

### **Independent Controllers of Personal Data**

18. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the

## Joint Schedule 11 (Processing Data)

Crown Copyright 2023

Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.

19. Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
20. Where a Party has provided Personal Data to the other Party in accordance with paragraph 18 of this Joint Schedule 11 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
21. The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
22. The Parties shall only provide Personal Data to each other:
  - (a) to the extent necessary to perform their respective obligations under the Contract;
  - (b) in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and
  - (c) where it has recorded it in Annex 1 (*Processing Personal Data*).
23. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
24. A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
25. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract (**“Request Recipient”**):

## Joint Schedule 11 (Processing Data)

Crown Copyright 2023

- (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - (b) where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
    - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
    - (ii) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
26. Each Party shall promptly notify the other Party upon it becoming aware of any Data Loss Event relating to Personal Data provided by the other Party pursuant to the Contract and shall:
- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Loss Event;
  - (b) implement any measures necessary to restore the security of any compromised Personal Data;
  - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
27. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 (*Processing Personal Data*).
28. Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Annex 1 (*Processing Personal Data*).
29. Notwithstanding the general application of paragraphs 2 to 16 of this Joint Schedule 11 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with paragraphs 18 to 28 of this Joint Schedule 11.



Annex 1 - Processing Personal Data (Lot 1-7 Authority & Supplier, Call-Off Contract)

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

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

Description	Details
Identity of Controller for each Category of Personal Data	<p><b><i>The Customer is Controller, and the Supplier is the Processor</i></b></p> <p><i>The Parties acknowledge that in accordance with paragraph 3 to paragraph 16 and for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor of the following Personal Data:</i></p> <ul style="list-style-type: none"><li><i>Any Personal Data that the Customer's Users include in documents or workspaces created using the Services, typically name and email address in accordance with the DPA linked here: <a href="#">Lucid's DPA</a>.</i></li></ul>
Subject matter of the Processing	<p><i>The processing necessary to deliver the following software tools to the Customer :</i></p> <ul style="list-style-type: none"><li><i>Drawing tool (Lucid Chart)</i></li><li><i>Whiteboard collaboration tool (Lucid Spark).</i></li></ul> <p><i>The Lucid Suite is used to:</i></p> <ul style="list-style-type: none"><li><i>Produce technical diagrams to support the architectural design of TDS in C4, the Unified Modelling Language (UML), and flow charts.</i></li><li><i>Reverse engineering databases into entity relationship diagrams (used heavily during the documentation of the Compass as-is database).</i></li><li><i>Cloud implementation diagrams for AWS and Azure</i></li><li><i>Business process diagrams using Business Process Modelling Notation version 2 (BPMN2) notation.</i></li></ul> <p><i>As described in Lucid's DPA, the subject matter of the processing is</i></p>

**Joint Schedule 11 (Processing Data)**

Crown Copyright 2023

	<i>the provision of access to Lucid's visual collaboration tools.</i>
Duration of the Processing	<i>Customer Personal Data will be retained for the duration of the contract and will be deleted within 30 days following customer's written request to [REDACTED] as applicable, subject to Lucid's backup policy</i>
Nature and purposes of the Processing	<i>The nature of the processing includes collecting, storing, duplicating, deleting, disclosing, and otherwise processing personal data as reasonably necessary in connection with the performance of the Services as described in the Agreement and this DPA. Lucid will Process Customer Personal Data (i) to provide or improve the Services pursuant to the Agreement; (ii) to help ensure security and integrity to the extent the use of Customer Personal Data is reasonably necessary and proportionate for these purposes; (iii) to debug to identify and repair errors that impair existing intended functionality; (iv) to perform services on behalf of Lucid, which may include maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, and providing analytics services; (v) for internal research or analytics for technological development and demonstration; (vi) to undertake activities to verify or maintain the quality or safety of the Services and to improve, upgrade, or enhance the Services; and (vii) as otherwise allowed by the Agreement and this DPA.</i>
Type of Personal Data being Processed	<i>Any Personal Data that the Relevant Authority's Users include in documents or workspaces created using the Services, typically name and email address.</i>
Categories of Data Subject	<i>Relevant authority staff (i.e.) individuals whose names or other limited personal data that the Relevant Authority's Users include in documents or workspaces created using the Services).</i>
International transfers and legal gateway	<i>The transfer of Customer Personal Data will be subject to a single transfer mechanism in the following order of precedence: (a) the Data Privacy Framework; (b) a valid transfer mechanism approved for transfers of Customer Personal Data from the European Economic Area, United Kingdom, or Switzerland to the U.S.; or (c) the SCCs and/or the UK Addendum, each as applicable</i>

## Joint Schedule 11 (Processing Data)

Crown Copyright 2023

Location of processing	<i>United States and other jurisdictions as necessary for Lucid and its sub-processors (see Annex III of the DPA or <a href="https://lucid.co/eu-personal-data-sub-processor-list">https://lucid.co/eu-personal-data-sub-processor-list</a>).</i>
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under Union or Member State law to preserve that type of data	<i>Lucid will delete Customer Personal Data in its possession in accordance with the Agreement, subject to its automated deletion schedule and backup policy.</i>

## Annex 2 – Security

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

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

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

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

**End User Devices e.g.**

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

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

**Networking e.g.** The Supplier shall ensure that any Authority/Buyer Data which it causes to be transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.

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

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

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



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

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

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

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

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

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

### **Annex 3 - Joint Controller Agreement – Not Used**

#### **1. Joint Controller Status and Allocation of Responsibilities**

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 3 (Joint Controller Agreement) in replacement of paragraphs 3-16 of Joint Schedule 11 (Where one Party is Controller and the other Party is Processor) and paragraphs 18-28 of Joint Schedule 11 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the [Supplier/Relevant Authority]:

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

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

#### **2. Undertakings of both Parties**

2.1 The Supplier and the Relevant Authority each undertake that they shall:

- (a) report to the other Party every **[x]** months on:
  - (i) the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
  - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
  - (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
  - (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
  - (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,

that it has received in relation to the subject matter of the Contract during that period;

- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1(a)(i) to (v);
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- (d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Deliverables and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
- (e) request from the Data Subject only the minimum information necessary to provide the Deliverables and treat such extracted information as Confidential Information;
- (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or

accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;

- (g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
  - (i) are aware of and comply with their duties under this Annex 3 (Joint Controller Agreement) and those in respect of Confidential Information;
  - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so; and
  - (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- (h) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that it holds; and
- (j) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.

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

### **3. Data Protection Breach**

## Joint Schedule 11 (Processing Data)

Crown Copyright 2023

- 3.1 Without prejudice to clause 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Data Loss Event or circumstances that are likely to give rise to a Data Loss Event, providing the other Party and its advisors with:
- (a) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Data Loss Event under the Data Protection Legislation; and
  - (b) all reasonable assistance, including:
    - (i) co-operation with the other Party and the Information Commissioner investigating the Data Loss Event and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
    - (ii) co-operation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Data Loss Event;
    - (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Data Loss Event; and/or
    - (iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Data Loss Event, with complete information relating to the Data Loss Event, including, without limitation, the information set out in Clause 3.2.
- 3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Data Loss Event as it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Data Loss Event, including providing the other Party, as soon as possible and within 48 hours of the Data Loss Event relating to the Data Loss Event, in particular:
- (a) the nature of the Data Loss Event;
  - (b) the nature of Personal Data affected;
  - (c) the categories and number of Data Subjects concerned;
  - (d) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
  - (e) measures taken or proposed to be taken to address the Data Loss Event; and
  - (f) describe the likely consequences of the Data Loss Event.

**4. Audit**

**4.1 The Supplier shall permit:**

- (a) the Relevant Authority, or a third-party auditor acting under the Relevant Authority's direction, to conduct, at the Relevant Authority's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 3 and the Data Protection Legislation; and/or
- (b) the Relevant Authority, or a third-party auditor acting under the Relevant Authority's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Deliverables.

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

**5. Impact Assessments**

**5.1 The Parties shall:**

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

**6. ICO Guidance**

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

**7. Liabilities for Data Protection Breach**

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

- 7.1 If financial penalties are imposed by the Information Commissioner on either the Relevant Authority or the Supplier for a Data Loss Event ("**Financial Penalties**") then the following shall occur:
- (a) if in the view of the Information Commissioner, the Relevant Authority is responsible for the Data Loss Event, in that it is caused as a result of the actions or inaction of the Relevant Authority, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Relevant Authority, then the Relevant Authority shall be responsible for the payment of such Financial Penalties. In this case, the Relevant Authority will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Data Loss Event. The Supplier shall provide to the Relevant Authority and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Data Loss Event;
  - (b) if in the view of the Information Commissioner, the Supplier is responsible for the Data Loss Event, in that it is not a Data Loss Event that the Relevant Authority is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Relevant Authority and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Data Loss Event; or
  - (c) if no view as to responsibility is expressed by the Information Commissioner, then the Relevant Authority and the Supplier shall work together to investigate the relevant Data Loss Event and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Data Loss Event can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 34 of the Core Terms (Resolving disputes).
- 7.2 If either the Relevant Authority or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("Court") by a third party in respect of a Data Loss Event, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Data Loss Event shall be liable for the losses arising from such Data Loss Event. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
- 7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Data Loss Event (the "Claim Losses"):
- (a) if the Relevant Authority is responsible for the relevant Data Loss Event, then the Relevant Authority shall be responsible for the Claim Losses;
  - (b) if the Supplier is responsible for the relevant Data Loss Event, then the Supplier shall be responsible for the Claim Losses: and

- (c) if responsibility for the relevant Data Loss Event is unclear, then the Relevant Authority and the Supplier shall be responsible for the Claim Losses equally.

7.4 Nothing in either clause 7.2 or clause 7.3 shall preclude the Relevant Authority and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Data Loss Event, having regard to all the circumstances of the Data Loss Event and the legal and financial obligations of the Relevant Authority.

## **8. Termination**

If the Supplier is in material Default under any of its obligations under this Annex 3 (*Joint Controller Agreement*), the Relevant Authority shall be entitled to terminate the Contract by issuing a Termination Notice to the Supplier in accordance with Clause 10 of the Core Terms (*Ending the contract*).

## **9. Sub-Processing**

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

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

## **10. Data Retention**

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



Annex A  
Software and End-User Licence Agreement (EULA)

The Buyer acknowledges that their acceptance of the Lucid Inc. Terms of Service linked below are a condition of the sale of the licences:

[Lucid Inc. Terms of Service](#)

## Introduction

Last updated: June 17, 2025

Lucid Software Inc. located at 10355 S. Jordan Gateway, Suite 300, South Jordan, UT 84095, United States, itself or through its wholly-owned subsidiary airfocus GmbH located at Jungfernstieg 49, 20354 Hamburg, ("**airfocus**" and together with Lucid Software Inc., "**Lucid**," "**we**," "**us**," or "**our**"), makes its software services available online, including via a mobile application in some cases, and as subscription services (each, a "**Subscription Service**"), and provides implementation, consulting, configuration, integration, training, advisory, development, and other professional services ("**Professional Services**" and collectively with the Subscription Services, Support (defined below), and any other services described in an Order (defined below), the "**Services**"). Our marketing websites, including [lucidchart.com](https://lucidchart.com), [lucidspark.com](https://lucidspark.com), [lucid.co](https://lucid.co), [community.lucid.co](https://community.lucid.co), [help.lucid.co](https://help.lucid.co), [training.lucid.co](https://training.lucid.co), and [airfocus.com](https://airfocus.com) are referred to herein as the "**Websites**".

Lucid may update these Terms of Service (the "**Terms**") from time to time in accordance with the "Changes to the Terms" section below.

DISPUTES ABOUT THESE TERMS OF SERVICE AND THE SERVICES ARE SUBJECT TO BINDING ARBITRATION AND A WAIVER OF CLASS ACTION RIGHTS AS SET FORTH IN THE "MANDATORY ARBITRATION" AND "CLASS ACTION WAIVER" SECTIONS BELOW.

## 1. Accepting the Terms

1. 1.1. Acknowledgement. You acknowledge and agree that you have read, understand, and agree to be bound by these Terms by either:
  1. (a) clicking or tapping on a button indicating your acceptance (usually during the registration or onboarding process);
  2. (b) accessing or using a Service or Website; or
  3. (c) executing or making payment based on an ordering document, statement of work or invoice issued by Lucid (each, an "**Order**") that references these Terms.

4. **Regardless of what type of User (defined below) you are, you agree that these Terms create a legally binding relationship between you and Lucid and govern your use of the Services and Websites.**
2. 1.2. Authority. By accepting these Terms, you (the “**User**”) represent that you have the legal power to do so. If you accept these Terms on behalf of an organization:
  1. (a) “**you**” and “**your**” will refer to that organization, and any individual accessing a Service through your account will be referred to as a “**User**”;
  2. (b) you represent and warrant that you have the authority to bind the organization; and
  3. (c) you understand and agree that the organization is bound by and responsible for ensuring that each of its Users comply with these Terms.

## 2. Your Relationship with Lucid

1. 2.1. Types of Users. Lucid has three different types of Users:
  1. (a) Users of the Websites (“**Site Visitors**”);
  2. (b) Users on a free or trial version of the Services (“**Free Users**”); and
  3. (c) Users who are part of a paid subscription plan (“**Subscribers**”).
2. 2.2. Affiliates. If you are an entity purchasing a Multi-User Plan (defined below in the section titled “Content in a Multi-User Account”), your affiliates may use the Services purchased by you as Users on your account. Alternatively, your affiliate may enter into its own Order(s) as mutually agreed with Lucid, which will create a separate agreement between the affiliate and Lucid that incorporates these Terms.
3. 2.3. Prohibited Users. If you are barred from receiving the Services under the laws of the United States or other countries, including the country in which you are a resident or from which you use the Services, you may not use the Services. If you represent a Multi-User Plan, you will ensure that:
  1. (a) your Users do not use any Services in violation of any export restriction or embargo by the United States; and
  2. (b) you do not provide access to any Services to persons or entities on any restricted lists.
4. 2.4. Age Requirement for Users. If you are under 18 years old, you may not create a Lucid account or use the Services unless you are instructed to by your School (defined below) and you use your School email address.

## 3. The Services Provided by Lucid

1. 3.1. Subscription Services. You and each User may access and use the applicable Subscription Service during the Subscription Term (defined below) solely for your internal business or personal purposes, subject to payment of the applicable fees and the requirements of these Terms and the applicable Order. You may purchase additional Subscription Services or add paid Users during the applicable Subscription Term at your then-current unit price; related fees will be prorated for the remainder of the applicable Subscription Term.  
“**Subscription Term**” means the period of time beginning on the earliest start date and concluding on the latest end date listed in an Order.

2. 3.2. Features and Functionality. The Subscription Services include the features and functionality applicable to the subscription tier and add-ons selected. Available subscription plans and details of those plans may change over time but will not be materially degraded mid-Subscription Term. Your use of AI products, features, and functionality is optional, but any use is subject to [Lucid's AI Terms](#).
3. 3.3. **Subscription Renewal**. If you are a Subscriber, you are enrolling in a recurring payment plan. After each Subscription Term, your Subscription Service will automatically renew with the current products and number of subscriptions (or applicable billing increment for Services not sold on a per-User basis) for the same period of time (e.g., 12 months if you chose an annual plan or 1 month if you choose a monthly plan), unless either party cancels
  1. (i) at least 30 days before the end of the current Subscription Term for a Multi-User Plan,
  2. (ii) prior to the end of the current Subscription Term for an individual or monthly paid account, or
  3. (iii) before conversion of a free trial to a paid plan (see the section titled "Free Trials" below), as outlined in the "Term and Termination" section below.

You authorize Lucid to invoice you or charge the designated payment method at the start of each new Subscription Term at the quantity and price then in effect for your paid account. An account owner or admin may review and make changes to subscription levels, number of Users, and Subscription Term in your account settings pages. Where required by applicable law, Lucid will provide notice in advance of your subscription automatically renewing.

4. 3.4. Professional Services. Lucid may provide Professional Services as described in, and subject to payment of the fees specified in, an Order. Any material changes requested or required to be made to the Order will require a change order agreed to and signed by the parties. Lucid hereby grants you the right to access and use the deliverables identified in an Order for Professional Services ("**Deliverables**") solely for your internal business or personal purposes and in accordance with these Terms. Descriptions of what is included in Lucid's standard Professional Services offerings are available at <https://lucid.co/product-service-descriptions>.
5. 3.5. Free and Beta Services. If you or a User receive any Services free of charge (e.g., trial or zero dollar proof of concept) or released as beta, pilot, limited release, non-production, or evaluation ("**Beta Features**"), you acknowledge and accept that such Services are provided "AS-IS", without any representations, warranties, support, maintenance, or other obligation of any kind from Lucid. Unless otherwise agreed in an Order, Lucid may terminate your access to, or use of, a free Service or a Beta Feature at any time, which may include permanent deletion of your Content (defined below) (e.g., if you move from our commercial environment to our FedRAMP environment).
6. 3.6. Free Trials. If you register for a free trial, your first payment will be charged immediately following the conclusion of the free trial period. Lucid will provide notice of the terms of the free trial period at the time you register, including when

you need to cancel the trial to avoid rolling over to a paid Subscription Service. **You may cancel the free trial to avoid conversion into a paid subscription at the end of the free trial term by providing notice in accordance with the section titled "Term and Termination".**

7. 3.7. Non-Lucid Applications. If you or a User chooses to utilize a Non-Lucid Application (defined below), your purchase and use of such Non-Lucid Application is subject to the agreement between you and the third-party provider. Lucid has no liability with respect to procurement, maintenance, use, or interoperability of any Non-Lucid Application, and Non-Lucid Applications are not part of the Services. **"Non-Lucid Application"** means a software application, service, integration, or functionality that is developed or provided by a third party, is not owned by Lucid or under Lucid's control, and interoperates with a Service.

## 4. Using the Services

1. 4.1. Access and Users. You will obtain, maintain, and support all internet access, equipment, and ancillary services needed to access the Services and Deliverables. Subscriptions are for named individuals and cannot be shared or used by more than one individual at a time. Each User must keep a secure password for accessing the Subscription Service and keep such password confidential. You will:
  1. (a) if applicable, obtain any consents necessary for Lucid to provide the Services;
  2. (b) maintain commercially reasonable security standards with respect to use of the Lucid Assets (defined below in the section titled "Intellectual Property"); and
  3. (c) in the event of any unauthorized access to or use of the Services or Deliverables, promptly notify Lucid at [legal@lucid.co](mailto:legal@lucid.co).
2. 4.2. Your Responsibilities. You are responsible for:
  1. (a) access to and use of the Subscription Service(s) and Deliverables by the Users on your account and each User's compliance with these Terms;
  2. (b) the secure transmission of your Content to the Subscription Service(s);
  3. (c) the legality, reliability, integrity, accuracy, and quality of the Content, any conclusions drawn or actions taken therefrom, and the means by which you or the Users acquired the Content so that Lucid and its service providers may lawfully use, process, and transfer the Content in accordance with these Terms;
  4. (d) if desired, backing up your Content outside of the Subscription Service;
  5. (e) using commercially available technologies to prevent the introduction of viruses, malware, Trojan horses, worms, spyware, or other destructive code ("**Malware**") into the Subscription Service(s); and
  6. (f) instructing the Users on the Use Restrictions and the limitations on Protected Information (each defined below), and ensuring that those limitations and/or Use Restrictions are not breached.

3. **“Content”** means the data, information, images, and other content included in documents or workspaces created in a Subscription Service by the Users, all of which is your Confidential Information (defined below).
4. 4.3. Protected Information. You acknowledge that the Subscription Service(s) are not designed or intended to store, process, or otherwise handle Protected Information, and that Lucid does not classify Content or provide special protection based on the type of data submitted by you. If Protected Information is entered into a Subscription Service, Lucid will treat such information as your Confidential Information and afford it the protections provided in these Terms but will not afford it any added protections based on the type of data provided. You acknowledge that any Protected Information submitted is done at your own risk and that Lucid will not be liable for heightened or statutory damages due to the nature or type of Protected Information submitted. **“Protected Information”** means information that is subject to specific regulations or laws that impose increased protections, obligations, and/or penalties with respect to handling that type of information, or that is not appropriate for use in the Services, as intended by Lucid. Protected Information includes, without limitation, classified information, data that is subject to the Payment Card Industry Data Security Standards (PCI DSS), Health Insurance Portability and Accountability Act (HIPAA), Gramm-Leach-Bliley Act (GLBA), Criminal Justice Information Services (CJIS) Security Policy, IRS Publication 1075 or any similar legislation in an applicable jurisdiction, or any credit or debit card and magnetic stripe information, government issued identification numbers, health or biometric information, education records, financial account information, personally identifiable information of children under the age of 16, or information deemed “sensitive” or “special category” under applicable law (such as racial or ethnic origin, political opinions, or religious or philosophical beliefs).
5. 4.4. Use Restrictions. You will not, and will ensure that each User does not:
  1. (a) license, sublicense, sell, resell, rent, lease, transfer, distribute, provide access, or otherwise commercially exploit, or make the Services or Deliverables available to any third party except as expressly authorized herein;
  2. (b) copy, modify, translate, adapt, merge, or create derivative works of the Services or Deliverables or disassemble, decompile, reverse engineer, or otherwise extract the source code of, or reduce to human-perceivable form, any part of the Services or Deliverables unless the foregoing restrictions are expressly prohibited by applicable law;
  3. (c) use or access the Services or Deliverables or any component of them
    1. (i) to develop, provide or make available any tool, application, product, or service that substantially replicates or competes with any tool, application, product, or service offered by Lucid, one with similar ideas, features, functions or graphics, or to determine whether the Lucid Assets are within the scope of any patent;
    2. (ii) to divert, migrate, or aid in the diversion or migration of Lucid customers or prospective customers from the Services to any tool, application, product, or service that substantially replicates or competes with any tool, application, product, or service offered by Lucid; or

3. (iii) other than in compliance with these Terms and all applicable laws and regulations (including export control laws and restrictions);
  4. (d) remove or modify any proprietary markings or restrictive legends in a Subscription Service or on the Deliverables;
  5. (e) infringe or misappropriate any Lucid Assets;
  6. (f) attempt to gain unauthorized access to the Services or any portion thereof;
  7. (g) knowingly, intentionally, or negligently introduce Malware into, or otherwise engage in any malicious act or disrupt the security, integrity or operation of a Subscription Service;
  8. (h) access or attempt to access a Subscription Service by any means other than Lucid's publicly supported interfaces, including any automated means (i.e., use of scripts or web crawlers);
  9. (i) probe, scan, or test the vulnerability of any Lucid system or network; or
  10. (j) access, store, create, share, display, publish, or transmit any material that
    1. (i) a person would reasonably believe to be unlawful or related to illegal activity, threatening, deceptive, defamatory, discriminatory, obscene, libelous, an invasion of privacy; or
    2. (ii) infringes or misappropriates the intellectual property rights of a third party through the Services ((a)-(j) collectively, the "**Use Restrictions**").
6. 4.5. Content Reporting and EU Digital Services Act. The European Union's Digital Services Act ("**DSA**") covers hosting services, including the Lucid Subscription Services. The DSA requires that hosting services remove reported content that violates policies or applicable law, among other obligations.
7. Lucid was built for collaboration and we're committed to maintaining Lucid as a safe, trusted and productive work environment for our customers and Users. Using Lucid to store or share prohibited or illegal content violates these Terms. When we are alerted to prohibited or illegal content being stored or shared through the Subscription Services, we will either directly remove that content consistent with applicable law and our terms and policies, or work with the applicable customer (as the data controller) or User to remove such content where we are the data processor and we do not have access to or the ability to remove such content. Please note that we may use automated processing technologies as part of our review and/or moderation practices, but a decision as to whether content is removed or restricted in the Subscription Services will be made via human review.
8. If you are located in the European Union and you believe there is illegal content in Lucid's Services, you can report it at the following [link](#). We will review reports and remove content that violates our policies or applicable law. If you are a User whose content has been removed on the basis of a report, we (or where we are a processor, the data controller) will provide you with an explanation for the removal. You will then have the ability to appeal the decision. Information on how to appeal and the information to provide will be given in our notification to you.

Customers, Users, and regulatory authorities with questions about Lucid's compliance with the DSA can email us at [legal@lucid.co](mailto:legal@lucid.co).

## 5. Sharing Features in the Services

1. 5.1. Sharing Content. The Subscription Services allow you to share information and Content within your account, outside your account, and publicly. You are solely responsible for the Content that you create, transmit, display, or share with others while using the Subscription Services, and for the consequences of your actions.
2. 5.2. Third-Party Content. The Services may contain content provided by third parties (e.g., templates) that is not owned by Lucid and that may be protected by intellectual property rights of those third parties. Such content is the sole responsibility of the person or entity from whom it originated, and you are responsible for your use of it.
3. 5.3. Collaboration. If you accept an invitation to view or collaborate on another User's Content, you acknowledge that your access to that Content and any information you provide or changes you make will be under the sole control of the owner of that Content. In addition, the owner of that Content, other Users who have access to that Content, and the owner and administrators of the account containing that Content will be able to view certain information, including personal information, about you.

## 6. Lucid's Provision of the Services

1. 6.1. Support and Documentation. Lucid provides technical support for the Subscription Services ("**Support**") through its online help center available at <https://help.lucid.co/hc/en-us> or <https://help.airfocus.com/en/>, as applicable. Support requests may also be submitted to [support@lucid.co](mailto:support@lucid.co) or [support@airfocus.com](mailto:support@airfocus.com), as applicable. Technical product support will be provided by Lucid personnel in any country where we operate. Lucid's end user documentation is available in-product and through the online help center available at <https://help.lucid.co/hc/en-us> or <https://help.airfocus.com/en/>, each as may be updated from time to time (the "**Documentation**").
2. 6.2. Updates. Lucid makes and automatically delivers updates (e.g., bug fixes, enhancements) to the Subscription Services on an ongoing basis. Except for urgent updates, Lucid schedules maintenance during non-peak usage hours (that minimizes the impact on all Users, worldwide).

## 7. Data Security, Privacy and Your Personal Information

1. 7.1. Your Personal Information. [Lucid's Privacy Policy](#) governs how Lucid treats your personal information and protects your privacy when you use the Websites and Services. You acknowledge that you have read, and agree to the use of your data, including personal information, as outlined in [Lucid's Privacy Policy](#).



2. 7.2. Security. Lucid will maintain administrative, physical, technical and organizational measures to protect the security, confidentiality, and integrity of your Content in accordance with our [Information Security Program](#). Any revisions to our [Information Security Program](#) will not diminish our current data security obligations.
3. 7.3. Data Processing Addendum. If you are an Enterprise-SKU customer with a Multi-User Plan, Lucid's [Data Processing Addendum](#) ("DPA") governs the processing of any Customer Personal Data (as defined in the DPA).
4. 7.4. Account Information. Lucid will use data provided in connection with the creation or administration of entity and User accounts to set up and maintain such accounts, provide and maintain the Services, detect and prevent fraud or violations of these Terms, inform you and other Users about new products and features, and as necessary to comply with applicable law, regulation, legal process or government agency requests.

## 8. Confidentiality

1. 8.1. Definition. "**Confidential Information**" means information of or provided by a party ("**disclosing party**") to the other party ("**receiving party**") that is non-public, proprietary, business, technical, security, legal, or financial information that is marked or identified as Confidential Information or would reasonably be understood to be confidential, such as information about products, Beta Features, processes, services, trade secrets, marketing and business plans, client lists, pricing, financial information, system architecture, security programs, or intellectual property. For clarity, pricing for the Services is Lucid's Confidential Information. Notwithstanding the foregoing, Confidential Information does not include information that:
  1. (a) the receiving party possesses without a duty to keep confidential prior to acquiring it from the disclosing party;
  2. (b) is or becomes publicly available through no violation of this agreement by the receiving party;
  3. (c) is given to the receiving party by a third party not under a confidentiality obligation to the disclosing party; or
  4. (d) is developed by the receiving party independently of, and without reliance on, confidential or proprietary information provided by the disclosing party.
2. 8.2. Use and Disclosure. Each party may be given access to Confidential Information of the other party in connection with these Terms. The receiving party may only use this Confidential Information as provided for in these Terms or to exercise its rights hereunder and may only share this Confidential Information with its employees, agents, advisors, procurement agents and service providers who need to know it, provided they are subject to similar confidentiality obligations. The receiving party will use the same degree of care, but no less than a reasonable degree of care, as such party uses with respect to its own Confidential Information of a similar nature to protect the disclosing party's Confidential Information and to prevent any unauthorized use or disclosure thereof. Neither party is responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party not under the receiving party's control. If the receiving party is compelled by law to



disclose the other party's Confidential Information, it will provide the disclosing party prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure. These confidentiality obligations will remain in effect for the Term (defined below in the section titled "Term and Termination") and for an additional 1 year following termination.

## 9. Intellectual Property

1. 9.1. Your Content. As between the parties, you own all rights, title, and interest in and to your Confidential Information and the Content in the accounts for which you are the account owner, including all intellectual property and proprietary rights therein. Except as expressly set forth herein, Lucid acquires no right, title, or interest in or to your Content or Confidential Information.
2. 9.2. Lucid's Use of Your Content. Subject to these Terms, you grant Lucid the right to access, hold, use, and process Content until removed from a Subscription Service:
  1. (a) as requested by you or a User;
  2. (b) as necessary to provide or improve the Services;
  3. (c) to identify, investigate, or resolve technical, security or integrity problems with the Services;
  4. (d) to detect and prevent fraud or violations of these Terms; and
  5. (e) as required by applicable law, regulation, legal process or governmental request.
3. Lucid may utilize subcontractors or SaaS tools in connection with Lucid's provision of the Services and Lucid's use of your Content, including processing Content, provided that such third parties are subject to appropriate confidentiality and data security obligations. Lucid is responsible for such third parties' acts and omissions in relation to Lucid's obligations to you.
4. 9.3. Lucid. As between the parties, Lucid owns all rights, title, and interest in and to the Lucid Assets (defined below) and Lucid Confidential Information, including all intellectual property and proprietary rights therein. Except as expressly set forth herein, Lucid does not convey any rights to you or any User. "**Lucid Assets**" means
  1. (a) the Subscription Service(s), work product, Documentation, and Deliverables (but not any Content or your Confidential Information contained therein); and
  2. (b) all Lucid copyrights, patents, trademarks, trade names, trade secrets, specifications, technology, software, data, methodologies, machine learning models, changes, improvements, components, and documentation used to provide the Services or made available in connection herewith, and all intellectual property, proprietary rights and underlying source code, object code, and know-how in and to the foregoing.

You or your Users may voluntarily provide feedback, comments, or suggestions directly to Lucid or by posting on any Lucid-hosted forum or page ("**Feedback**") to Lucid and Lucid may use such Feedback without any obligations or restrictions. As part of providing or improving our Service offerings, Lucid may

generate, derive, and use statistical, usage, learned, and technical information regarding the operation or use of our Services for our own internal business purposes (including to train machine learning algorithms) subject to the terms of this Agreement.

5. 9.4. Trademark Violations. If you believe that Lucid, or any User, has violated a copyright, trademark, or other intellectual property right you claim in your work, please contact us at [legal@lucid.co](mailto:legal@lucid.co). Lucid responds to notices of alleged copyright infringement in accordance with the U.S. Digital Millennium Copyright Act (“DMCA”).

## 10. Multi-User Accounts

1. 10.1. Account Owners and Administrators. You retain administrative control over who is granted access to your account. Each account is controlled by an account owner or admin tied to a specific email address and may also have one or more other admins to help manage the account. Lucid will rely on communications from the account owner and admins when servicing your account. If a person within your organization requests a change to the account owner, we will attempt to contact the current account owner, if applicable, for consent, but to the extent that the account owner does not respond to our communications or an admin has not been designated as the account owner, we will transfer the account owner based on our internal verification methods.
2. 10.2. Content in a Multi-User Account. When you create Content under an individual plan, that Content is available only to you and others with whom you share the Content. However, if you are or become an individual User under a multi-user subscription plan (a “**Multi-User Plan**”), such as an Enterprise account maintained by your employer, any Content you have created, or will create, will be under the control of the applicable account owner and admins and will be considered Content owned by the person or entity controlling the account (e.g., your employer). The account owner and admins of a Multi-User Plan can designate other Users under that Multi-User Plan as owners of the Content you originally created, in which case you may no longer be able to access or use the Content. In addition, the account owner or admins of such Multi-User Plan may downgrade your access, remove you from the account or permanently delete you or your Content from the account without your prior consent.
3. 10.3. Account Control. You acknowledge and agree that if you are a registered User, and the domain of the email address associated with your Lucid account is owned by an organization, and an authorized representative of that organization wishes to establish a Multi-User Plan and add you to it, then information concerning your existing account will become accessible to that organization, including your name, email address, and Content, and your existing account may be added to a Multi-User Plan without your prior consent. In these situations, any credit remaining on your account may be applied to the Multi-User Plan account. In addition, you acknowledge and agree that if you are or become a registered User on a Multi-User Plan your account information and data will be shared with the owner and admins of the account and your information and Content may also be visible to other Users in the account.

## 11. Representations and Warranties

1. 11.1. Lucid. Lucid warrants that:
  1. (a) during the applicable Subscription Term, the Subscription Service(s) will operate substantially as described in the Documentation;
  2. (b) Support and Professional Services will be performed in a competent and workmanlike manner;
  3. (c) the Deliverables will conform to the specifications in the applicable Order;
  4. (d) it has the necessary authority to enter into these Terms; and
  5. (e) it will comply with all laws and regulations (including export control laws and restrictions) applicable to its provision of the Services to its users generally (i.e., without regard for your particular use of the Services or laws and regulations specific to you and your industry).
2. If you believe a Service or Deliverable does not comply with the warranties in (a)-(c), you must notify Lucid in writing within 30 days of discovery of the nonconformity. To the maximum extent permitted by applicable law, as your exclusive remedy and Lucid's sole liability for breach of these warranties, Lucid will use commercially reasonable efforts to correct the non-conforming Service or Deliverable at no additional charge within a reasonable time period. These warranties will not apply to any failure caused by you, any User, or a person acting at your direction.

11.2. You. If you are the representative of an entity with a Multi-User Plan and you

1. (a) convert any existing accounts registered using email addresses from your entity domain into accounts under your control; or
  2. (b) if available, enable administrative controls over access to a Subscription Service based on your e-mail domains (e.g., Lucid's lock-down and consolidation features), you represent and warrant that the entity owns such e-mail domain(s) and the Content that has been created by individuals with such e-mail domains.
3. You will appoint an administrator to manage your account and will be solely responsible for the administrator's acts and omissions with respect to the Services.

11.3. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY MAKES ANY REPRESENTATION, GUARANTEE OR WARRANTY OF ANY KIND, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. LUCID MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND REGARDING ANY NON-LUCID APPLICATION WITH WHICH THE SERVICE MAY INTEROPERATE. LUCID DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME OR THAT DEFECTS IN THE

OPERATION OR FUNCTIONALITY OF ANY SOFTWARE PROVIDED TO YOU AS PART OF THE SERVICES WILL BE CORRECTED.

## 12. Billing and Payment

1. 12.1. Services Fees. You will pay the fees and taxes specified in each Order for the applicable Services. In addition, you will reimburse Lucid for reasonable, documented, out-of-pocket expenses (including all travel costs and expenses) incurred by Lucid while providing Professional Services that are authorized or pre-approved by you in writing.
2. 12.2. Payment. If you select a paid tier of a Subscription Service (a “**paid account**”) Lucid will bill you in advance on the frequency that you select. The term of your Subscription Service will be available in your account settings pages and/or set forth in the associated Order. Unless specified in an Order, Professional Services will be performed remotely and are provided on a time and materials basis. You authorize Lucid to charge your credit card or other payment method for all fees and expenses, at the quantities and prices associated with your paid account, when due. Lucid may enable other forms of payment in the account settings pages, which may be subject to additional terms. Unless otherwise specified in an Order, payments for invoices are due 30 days after the invoice date. You agree to promptly notify Lucid in writing of any changes to your billing information during any Subscription Term. In the event your non-invoice form of payment fails and is not updated within Lucid’s system within 10 days, Lucid will invoice the remaining Subscription Service term with payment due upon receipt. Lucid reserves the right to correct any billing errors or mistakes that Lucid identifies in an invoice or after a payment is received.
3. 12.3. Non-refundable. Except as expressly set forth in these Terms or when required by applicable law:
  1. (a) all fees are non-cancellable and once paid are non-refundable; and
  2. (b) products and quantities purchased cannot be decreased during a Subscription Term.
4. 12.4. Pricing. Unless specified in an Order, Service pricing is specified on the Websites. Lucid may modify pricing for renewal periods upon written notice to you or an account admin (in the form of an invoice or any other form of notice used by Lucid to communicate with you); provided that, if the tier and/or number of units purchased for such renewal term is equal to or greater than the tier and/or number of units up for renewal, Lucid will provide notice prior to your cancellation or subscription change deadline described in the section titled “Termination and Subscription Changes By You” below. If you do not accept the pricing change, you may elect to not renew your paid account subject to the section titled “Term and Termination” below. If you upgrade to a higher tier of paid account, Lucid will credit any remaining balance from your previous subscription payment to your new tier.
5. 12.5. Billing disputes. Billing disputes must be notified to Lucid in writing within 30 days from discovery of an error. Except as prohibited by law, Lucid may charge a late fee of 1.5% (or, if lower, the highest rate permitted by law) per month on undisputed past due amounts. You will be responsible for all reasonable expenses (including attorneys’ fees) incurred by Lucid in collecting delinquent amounts. If you require a purchase order, vendor registration form, or

other documentation, such requirement will in no way relieve, affect or delay your obligation to pay any amounts due hereunder.

6. 12.6. Currency and Taxes. All amounts payable to Lucid will be paid in the currency set forth on the pricing page, in the Order, or in USD and are exclusive of any applicable sales or use taxes (such as GST or VAT). If Lucid is obligated to collect or pay these taxes, they will be stated separately on each invoice, unless you provide Lucid (in advance) with a valid tax exemption certificate authorized by the applicable taxing authority. If you are required by law to withhold any taxes from your payments to Lucid, you must provide Lucid with an official tax receipt or other appropriate documentation to support such withholding and reimburse Lucid for such withholding tax.
7. 12.7. Procurement Agents. If you purchase Services through a procurement agent, you will remain liable for the fees payable to Lucid and the other obligations in this agreement.

## 13. Indemnification

1. 13.1. By Lucid. Lucid will indemnify you, your officers, directors, and employees (the “**Customer Indemnified Parties**”) against any claim, action, demand, suit, or proceeding (each, a “**Claim**”) brought against the Customer Indemnified Parties by a third party alleging that a Subscription Service or Deliverable infringes such third-party’s intellectual property rights, including any finally awarded damages or settlement amount and reasonable expenses (including attorneys’ fees) to the extent arising from such Claim. Notwithstanding the foregoing, Lucid will not be obligated to indemnify the Customer Indemnified Parties if an infringement claim arises from:
  1. (a) the Content;
  2. (b) a User’s misuse of a Subscription Service;
  3. (c) a User’s use of the Subscription Service in combination with any products, services, or technology not provided by Lucid or a modification of a Subscription Service or Deliverable by you or a User, if the Subscription Service or Deliverable or use thereof would not infringe without such combination or modification; or
  4. (d) continued use of a Subscription Service or Deliverable after written notice by Lucid to discontinue use. If an infringement Claim is made or threatened, Lucid may, in its sole discretion:
    1. (i) replace or modify the infringing Subscription Service or Deliverable so that it is non-infringing (but functionally equivalent);
    2. (ii) procure the right for you to continue using the Subscription Service or Deliverable; or
    3. (iii) notwithstanding Lucid’s obligation to indemnify, terminate use of the infringing Subscription Service or Deliverable and refund any unused prepaid fees covering the terminated portion of the Subscription Service or Deliverable.
2. 13.2. By You. You will indemnify Lucid and Lucid’s affiliates, and their respective officers, directors, and employees (the “**Lucid Indemnified Parties**”) against any Claim made or brought against the Lucid Indemnified Parties by a third party or User arising from or related to your Content or the actions of your administrator(s) with respect to your account, including any finally awarded

damages or settlement amount and reasonable expenses (including attorneys' fees) to the extent arising from such Claim.

3. 13.3. Process. The party seeking indemnification (the "**Indemnified Party**") will provide the other party (the "**Indemnifying Party**") prompt written notice of any Claim and reasonable cooperation to the Indemnifying Party in the defense, investigation or settlement of any Claim at the Indemnifying Party's expense. The Indemnifying Party will have sole control of such defense, provided that the Indemnified Party may participate in its own defense at its sole expense. The Indemnifying Party may not settle a Claim without the Indemnified Party's consent if such settlement imposes a payment or other obligation on the Indemnified Party. This section sets forth the Indemnifying Party's sole liability to, and the Indemnified Party's exclusive remedy for, any type of Claim described in this section.

## 14. Limitation of Liability

1. 14.1. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW:
  - a. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR DATA, BUSINESS INTERRUPTION, DEPLETION OF GOODWILL, OR INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSS ARISING OUT OF OR RELATED TO THESE TERMS, REGARDLESS OF THE BASIS OR TYPE OF CLAIM AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS; AND
  - b. EACH PARTY'S AGGREGATE LIABILITY FOR DAMAGES OR LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) WILL NOT EXCEED THE GREATER OF
    1. (i) THE AMOUNT PAID OR PAYABLE BY YOU HEREUNDER WITHIN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY OR
    2. (ii) \$200.00.

THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT.

2. Section 14.1(b) does not apply to instances of willful misconduct, to amounts payable to third parties under a party's indemnification obligations, to your obligations to pay fees, expenses and taxes when due, to noncompliance with the section titled "Using the Services" above, or to any infringement or misappropriation by a party of any intellectual property rights of the other party.
3. 14.2. General. The parties acknowledge and agree that the limitations of liability, disclaimer of warranties, and any exclusion of damages included herein represent an allocation of risk between the parties (including the risk that a remedy may fail of its essential purpose) which is reflected by the fees paid. Notwithstanding the foregoing, nothing in these Terms excludes or limits Lucid's warranty obligations or liability for losses which may not be lawfully excluded or limited by applicable law. Only the limitations which are lawful in your jurisdiction

will apply to you and Lucid's liability will be limited to the maximum extent permitted by law.

## 15. Term and Termination

1. 15.1. Term. These Terms, which are effective as of the date shown above, will apply until all accounts under your control are permanently closed unless superseded by a written agreement between you and Lucid (the "**Term**").
2. 15.2. Termination and Subscription Changes By You. If you want to cancel your auto-renewal, downgrade your subscription tier or products, reduce your quantity of User subscriptions for an upcoming renewal, terminate your paid subscription, or end your free trial before conversion to a paid subscription, you must do so by either:
  1. (a) notifying Lucid at [support@lucid.co](mailto:support@lucid.co) or [support@airfocus.com](mailto:support@airfocus.com), as applicable; or
  2. (b) making the desired adjustments in your account settings pages if available
    1. (i) no less than 30 days before the end of your then-current Subscription Term for a Multi-User Plan;
    2. (ii) any time before the end of your then-current Subscription Term for an individual or monthly paid account; or
    3. (iii) before conversion of a free trial to a paid plan.
3. If you do not make the desired adjustments or notify Lucid within the applicable time period, your paid account will renew as outlined in the section titled "Subscription Renewal" or your free trial will convert into a paid subscription as outlined in the section titled "Free Trials". You will continue to have access to all the features of your paid or trial account until the end of the then-current Subscription Term. Lucid does not provide any refunds or credits for partial Subscription Terms.
4. 15.3. Termination by Either Party. A party (referred to within this section as, the "**relevant party**") may terminate the Services if:
  1. (a) if the other party ("**breaching party**") commits a material breach of these Terms (or has acted in a manner which clearly shows that the breaching party does not intend to, or is unable to comply with, the provisions of the Terms) and such breach either
    1. (i) is not capable of being cured; or
    2. (ii) has not been cured within 10 days of receiving written notice of the breach from the relevant party;
  2. (b) immediately upon the breaching party ceasing to operate in the ordinary course, making an assignment for the benefit of creditors, or becoming the subject of any insolvency, bankruptcy, liquidation, dissolution, or similar proceeding; or
  3. (c) if the relevant party is required to do so by law.
5. 15.4. Termination by Lucid. Lucid, acting reasonably, may terminate your access to any or all of the Services and/or close your account to protect Lucid's legitimate interests by giving you 30 days' written notice to your email address on file and providing a pro rata refund for any prepaid, unused subscription fees for the Services.

6. **15.5. Suspension.** Lucid reserves the right to suspend access to the Service(s) if:
1. (a) you have undisputed amounts past due; or
  2. (b) Lucid reasonably determines that you or any Users on your account are using a Service in a way that creates a security vulnerability, may disrupt others' use of a Service, have misappropriated or infringed Lucid's or another third-party's intellectual property or proprietary rights, or otherwise violates Section 4.4.

Lucid will only suspend access to the extent, and for the duration, necessary to address the violation and will promptly restore access once the issue has been resolved. Lucid will not suspend access if you are (reasonably and in good faith) disputing a charge and cooperating in resolving the dispute. You acknowledge and agree that if Lucid suspends access to your account, you may be prevented from accessing the Services, your account details, or any files or other Content contained in your account. If the reason for suspension cannot be resolved, Lucid will automatically downgrade your account to a free account or terminate your use of the Service(s). Downgrading your account may cause the loss of Content, features, functionality, or capacity.

7. **15.6. Effect of Termination.** On termination of the Services:
1. (a) all Orders will terminate;
  2. (b) Lucid will disable your account and each User's access to the paid Services;
  3. (c) you will immediately pay any accrued but unpaid and undisputed fees;
  4. (d) each party will return and make no further use of, or destroy (subject to Section 15.7 and each party's automated deletion schedule and back-up policy), any Confidential Information belonging to the other party.

You may export or download your Content at any time from the non-airfocus Subscription Services in accordance with the Documentation. Any requested post-termination transition assistance is subject to the mutual agreement of the parties (and may require payment of Professional Services fees to Lucid).

8. **15.7. Retention of Information and Content.** If you have canceled your paid account, your information and Content may be deactivated but not deleted or may be deleted permanently after a certain period of time. Upon cancellation of a Multi-User Plan, depending on the Subscription Service, Users may be automatically downgraded to free accounts. The ownership of such free account(s) will transfer to the applicable User(s), and any Content therein will remain in the free account(s) until the accounts are permanently closed by the User or otherwise at Lucid's reasonable discretion. Lucid may retain copies of Content as part of records, documents, or broader data sets in accordance with Lucid's legal and financial compliance obligations and automated deletion schedule and back-up policy, on the condition that Lucid continues to comply with the requirements of these Terms in relation to any retained Content. To delete your Content from our servers after ending your relationship with Lucid, please refer to the Documentation or contact [support@lucid.co](mailto:support@lucid.co) or [support@airfocus.com](mailto:support@airfocus.com), as applicable.



9. 15.8. Site Visitors. A Site Visitor may terminate its use of the Websites at any time by ceasing further use of the Website. Lucid may terminate your use of the Websites and deny you access to the Websites in our sole discretion for any reason or no reason, including for violation of these Terms.

## 16. Changes to the Terms

1. 16.1. Amendments and Effective Date. Lucid may make changes to the Terms from time to time. When these changes are made, Lucid will make a new copy of the Terms available at <https://lucid.co/tos>. You understand and agree that if you are on a free account and you use the Services after the date on which the Terms have changed, Lucid will treat your continued use of the Services as acceptance of the updated Terms. If you have a paid account, the new Terms will apply upon your renewal or the beginning of the next annual period listed on your Order, in which case your continued usage of the Services after such date or payment of an associated invoice will constitute your acceptance of the changes.
2. 16.2. Waivers. Any waiver of these Terms must be in writing and no written waiver will operate or be construed as a waiver of any subsequent breach. The failure of either party to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision or of any other right or provision.

## 17. Mandatory Arbitration

1. 17.1. Cooperative Resolution Process. The parties agree that most disputes can be resolved without resort to litigation or arbitration. If you have any dispute with us, you agree that before taking any formal action you will contact us at [legal@lucid.co](mailto:legal@lucid.co) and provide a brief, written description of the dispute and your contact information (including your username, if your dispute relates to an account). Except for the Excluded Disputes (defined below), the parties agree to use their best efforts to settle any dispute directly through consultation with each other, and good faith negotiations will be a condition to either party initiating an arbitration (the “**Cooperative Resolution Process**”). If the parties do not reach an agreed-upon solution within a period of 30 days from the time the Cooperative Resolution Process is initiated, then either party may initiate binding arbitration as the sole means to resolve any dispute (except for Excluded Disputes) subject to the terms set forth below.

17.2. Mandatory Arbitration. Any dispute, controversy, or claim relating to, connected with, or arising out of the subject matter of these Terms, or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate (a “**Dispute**”), will be determined by binding arbitration in Salt Lake City, Utah before one arbitrator. The arbitration will be administered by JAMS pursuant to JAMS’ Streamlined Arbitration Rules and Procedures. Judgment on an award may be entered in any court having jurisdiction. This clause does not preclude parties from seeking provisional remedies in aid of arbitration from a court of

appropriate jurisdiction. Any demand for arbitration under these Terms must be made before the statute of limitations applicable to such claim has expired. In any arbitration arising out of or related to these Terms, the arbitrator is not empowered to award punitive or exemplary damages, except where permitted by statute, and the parties waive any right to recovery of any such damages.

17.3. Excluded Disputes. Notwithstanding the parties' decision to resolve all Disputes through arbitration, the following Disputes may be brought in any state or federal court of competent jurisdiction seated in, respectively, either Salt Lake County, Utah or the District of Utah:

1. (a) disputes relating to or arising from misappropriation, infringement, validity and/or enforceability of a party's intellectual property rights (including patents, copyrights, moral rights, trademarks, and trade secrets, but not privacy or publicity rights);
2. (b) any action by a party seeking entry of a temporary restraining order, preliminary injunctive relief, or permanent injunctive relief; or
3. (c) any claims that, as a matter of law, the parties cannot agree to arbitrate (collectively, the "**Excluded Disputes**").

## 18. Class Action Waiver

1. 18.1. Class Action Waiver. The parties agree that an arbitrator will not have authority to conduct class arbitration of any Dispute. You and Lucid each agree that any arbitration or court action to resolve any Dispute will take place on an individual basis without resort to any form of class, consolidated, or representative action (the "**Class Action Waiver**"). YOU UNDERSTAND AND AGREE THAT THE CLASS ACTION WAIVER PRECLUDES ANY PARTY FROM PARTICIPATING IN OR BEING REPRESENTED IN ANY CLASS OR REPRESENTATIVE ACTION FOR ANY DISPUTE, INCLUDING CONSUMER DISPUTES AND BUSINESS DISPUTES. If any court or arbitrator determines that the Class Action Waiver is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provisions set forth above will be null and void in their entirety and the parties will be deemed to have not agreed to arbitrate Disputes.

## 19. General Legal Terms

1. 19.1. Publicity. Subject to any usage guidelines you provide to Lucid, and unless otherwise set forth in an Order, Lucid may use your name, corresponding trademark or logo, and non-competitive use details in both text and pictures to identify you as a customer and highlight such use details in publicly available oral and written statements, including on Lucid's website, in marketing materials, and in press releases. To request removal of this identification, please notify us in writing at [support@lucid.co](mailto:support@lucid.co). In addition, and without otherwise limiting the parties' confidentiality obligations under these Terms, Lucid may disclose the relationship between you and Lucid if legally required or in connection with a

- merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.
2. 19.2. Relationship of the Parties. You and Lucid are independent contractors. These Terms do not create or imply any agency, partnership, joint venture, fiduciary, employment or franchise relationship. No right or cause of action for any third party is created by these Terms or any transaction under it.
  3. 19.3. Force Majeure. Neither party is liable for delay or default hereunder if caused by conditions beyond its reasonable control, including natural disasters, acts of God, hacker attacks, acts of terror or war, riots, actions or decrees of governmental bodies, changes in applicable laws, or communication or power failures.
  4. 19.4. Governing Law. These Terms and your relationship with Lucid under the Terms, are governed by the laws of the State of Utah (USA) without regard to its conflict or choice of law rules. To the extent the arbitration provisions herein are excluded by written agreement, held void or unenforceable, and for all Excluded Disputes, the parties consent to exclusive jurisdiction and venue in the state or federal courts seated in, respectively, either Salt Lake County, Utah (USA) or the District of Utah to resolve any Dispute. Any legal or arbitration proceeding will be in the English language.
  5. 19.5. Injunctive Relief. Each party acknowledges that any breach, threatened or actual, of the confidentiality and intellectual property obligations hereunder may cause irreparable injury to the other party for which there may not be an adequate remedy at law. Therefore, upon any such breach or threat thereof, the party alleging breach will be entitled to seek injunctive and other appropriate equitable relief in addition to any other remedies available to it, without the requirement of posting a bond.
  6. 19.6. Notices. You agree that Lucid may provide you with notices by email, regular mail, or postings on the Services. You may provide notice to Lucid by emailing [legal@lucid.co](mailto:legal@lucid.co).
  7. 19.7. Assignment. Neither this agreement, nor the rights or obligations hereunder may be assigned, transferred, or novated by either party without the other party's prior written consent, which will not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may assign, transfer, or novate this agreement (including all Orders) without the consent of the other party to an affiliate or a successor in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party, provided that all fees owed and due by you have been paid.
  8. 19.8. Entire Agreement. These Terms (including any applicable Order) and any websites, policies, exhibits, schedules, supplemental terms, or documents referred to herein, constitute the entire agreement between you and Lucid related to the use of the Services and supersede all prior or contemporaneous representations, agreements, or understandings (written or verbal) relating to the subject matter hereof, including any non-disclosure agreements previously entered into by you and Lucid. If you require purchase orders, vendor registration forms, subsequent non-disclosure agreements, payment or vendor portals, or the like, they will be for convenience only, and all associated terms and conditions (pre-printed or otherwise and regardless of how or when

referenced or acknowledged, and whether or not signed by either party) will be void and of no effect.

9. 19.9. Translation. Where Lucid has provided you with a translation of the English language version of the Terms, you agree that the translation is provided for your convenience only and that the English language version of the Terms will govern your relationship with Lucid. If there is any contradiction between the English language version of the Terms and a translation, the English language version will take precedence.
10. 19.10. Interpretation. References to “include(s)”, “including”, or similar terms will not be read as terms of limitation, but rather as followed by the words “without limitation.” A word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender. If a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.
11. 19.11. Severability. If any provision of these Terms is found to be illegal, invalid, void or unenforceable, the remaining provisions will remain in full force and effect and the illegal, invalid, void or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by applicable law.
12. 19.12. Survival. Any provision of these Terms that by its nature is reasonably intended to survive beyond termination of these Terms will survive.

## 20. Education Accounts

1. 20.1. Applicability. If you are a school, school district, or related person, entity or organization (such as an administrator or educator who accesses the Services on their behalf) (each a “**School**”), then this section applies to you and “**you**” means the School purchasing the account, as well as its Users. If you are not a School, then this section will not apply.

20.2. Agreements. You agree to

1. (a) only provide access to the Services to those individuals employed by, or enrolled as students in, your School or classroom; and
  2. (b) be responsible for any Content, communications, and activity that occur under such accounts.
2. Regardless of the account level being utilized, to the extent a School offers or requires access to the Services to minors, the School will be responsible for those User accounts under this section.
3. 20.3. Student Data. “**Student Data**” is any information (in any format) that is directly related to any identifiable current or former student that is maintained by a School and may include “educational records” as defined by the Family Educational Rights and Privacy Act (“**FERPA**”) that Schools provide to us. While we may need to access Student Data to provide the Services to you, Schools own the Student Data and remain responsible for it. Our [Lucid for Education Privacy Policy](#) provides more detail about how we handle Student Data for student users under the age of 18.
4. 20.4. Responsibilities. Both parties agree to uphold their responsibilities under the FERPA, the Protection of Pupil Rights Amendment, and the Children’s

Online Privacy and Protection Act (“**COPPA**”). We provide the Services under the “school official” exception of FERPA as defined at 34 C.F.R. § 99.31(a)(1). COPPA requires that online service providers obtain clear and verifiable parental consent before collecting personal information from children under the age of 13. You represent and warrant that you have the authority to provide consent on behalf of parents in order for us to collect information from students before allowing children under the age of 13 to access our Services. We require all Schools to provide appropriate disclosures to students and parents regarding their use of the Services and a copy of our [Lucid for Education Privacy Policy](#). If you are located outside of the United States, you will obtain any required consent or approval from the parent or guardian of any student covered by similar laws and, as a condition to your and your students' use of the Services, you agree that you will be responsible for complying with such laws.

5. 20.5. Deletion of Student Accounts. For individuals that select a student persona in our product and are on an email domain that we have classified as a K-12 domain, we will permanently delete the individual accounts after a certain number of years of inactivity within our product. We will attempt to notify the individual prior to deletion.

## 21. U.S. Government End Users

1. 21.1. The following terms apply to federal government (“**Government**”) Users: The Services include computer software, which is a “commercial product” as defined at 48 C.F.R. § 2.101, and also include “commercial services” as defined in 48 C.F.R. § 2.101. The Services also consist of “commercial computer software” and “commercial computer software documentation,” as those terms are used in 48 C.F.R. § 2.101 and 48 C.F.R. § 12.212. Consistent with 48 C.F.R. § 12.212 and 48 C.F.R. § 227.7202-1 through § 227.7202-4, you acquire the Services with only those rights, and subject to the obligations, set forth herein to the extent not inconsistent with federal procurement law in accordance with 48 C.F.R. § 552.212-4(w). In the event of a dispute with the Government in connection with this Agreement, the rights and duties of the parties shall be governed in accordance with federal procurement law, and such disputes shall be resolved pursuant to the Contract Disputes Act of 1978, as amended (41 U.S.C. §§ 7101-7109), as implemented by 48 C.F.R. § 52.233-1.

## 22. Product-Specific Terms - airfocus

1. 22.1. Application. The additional terms of this section titled “Product-Specific Terms - airfocus” only apply to your use of the airfocus Subscription Services regardless of what entity sells you the Service.
2. 22.2. Amendments. The following sections are amended and restated in their entirety to read:
3. 3.6. Free Trials. If you register for a free trial, your account will be automatically disabled following the conclusion of the free trial period unless you purchase a paid subscription. Lucid will provide notice of the terms of the free trial period at the time you register.



4. 7.1. Your Personal Information. [airfocus' Privacy Policy](#) governs how airfocus treats your personal information and protects your privacy when you use the airfocus-specific Websites and Services. You acknowledge that you have read, and agree to the use of your data, including personal information, as outlined in [airfocus' Privacy Policy](#).

## 23. Jurisdiction-Specific Terms - Users Located in Australia

1. 23.1. Application. The additional terms of this section titled "Jurisdiction-Specific Terms - Users located in Australia" only apply if you are a User located in the Commonwealth of Australia.
2. 23.2. Inconsistency with Other Terms. These Terms (and in particular, but not limited to, each of the sections titled "Representations and Warranties" and "Limitation of Liability") are subject to Schedule 2 to the Competition and Consumer Act 2010 (Commonwealth of Australia) (the "**ACL**" or "**Australian Consumer Law**"), including the consumer laws of applicable states and territories in Australia and also these additional Terms in this section titled "Jurisdiction-Specific Terms - Users located in Australia". In particular, the contractual rights you have under these Terms are in addition to other statutory rights you may have under the Australian Consumer Law and other Australian territory and state consumer protection laws. To the extent of any inconsistency between the other Terms and this section, this section titled "Jurisdiction-Specific Terms - Users located in Australia" prevails.
3. 23.3. Statutory Guarantees. Despite the section above titled "Disclaimer", there are certain guarantees or warranties that are implied into these Terms under Australian Consumer Law which cannot be excluded, including as to performance of the Services with due care and skill, guarantees as to fitness of the Services for specific disclosed or implied purposes and guarantees as to the supply of Services within a reasonable time. The provision of any goods under these Terms are also subject to specific statutory guarantees as to, among other things, title, quality, and fitness for purpose.
4. 23.4. Limitation of Liability and Other Statutory Rights. Despite any provisions of these Terms, Lucid's liability for any failure to comply with any such statutory guarantee or warranty referred to above in the section titled "Statutory Guarantees" is limited to the maximum extent permitted by applicable law to, at Lucid's option:
  5. 23.4.1. in respect of any Services - the supply of the Services again or the payment of the cost of having the Services supplied again; and
  6. 23.4.2. in respect of any goods -
    1. (i) the replacement of the goods;
    2. (ii) the supply of equivalent goods;
    3. (iii) the repair of the goods;
    4. (iv) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    5. (v) the payment of the cost of having the goods repaired,
  7. but in the case of either a "major failure" (as defined in the ACL) or a failure that cannot be remedied, in respect of any:

8. 23.4.3. Services - you are entitled to cancel / terminate the Order in respect of those Services, and you are entitled to a refund for the unused portion of the Services, or to compensation for the reduced value of the Services; and
9. 23.4.4. Goods - you are entitled to choose between a refund or replacement of the goods.
10. If a failure with any Services or goods supplied under these Terms is not a "major failure", you are entitled to have the failure rectified within a reasonable time and if not rectified in a reasonable time, you are entitled to a refund in respect of goods or to cancel the Order (i.e., terminate these Terms in respect of the Services) and to obtain a refund for any unused portion of the Services. You are also entitled to compensation for reasonably foreseeable loss or damage due to a failure in Services or goods supplied under these Terms.

## **24. Jurisdiction-Specific Terms - Users Located in Germany**

1. In deviation from Section 14 (Limitation of Liability) above, our liability under these Terms is conclusively determined in accordance with the following provisions:
  - 24.1. Application. The additional terms of this section titled "Jurisdiction-Specific Terms - Users located in Germany" only apply if you are a User located in Germany using the Services as a consumer.
  2. 24.2. Services free of charge. To the extent that Services are provided to you free of charge, Lucid will only be liable in accordance with the statutory provisions.
  3. 24.3. Services against payment. For Services provided against payment, the following shall apply:
    4. 24.3.1. Lucid will only be liable without limitation for any loss or damages caused by wilful intent (*Vorsatz*) or gross negligence (*große Fahrlässigkeit*), as well as for damages arising from injury to life, body, or health.
    5. 24.3.2. Lucid will only be liable for slight negligence (*leichte Fahrlässigkeit*) if an essential contractual obligation is breached. An "essential contractual obligation" within the meaning of this clause is indispensable for the duly execution of the contract and on which you can therefore regularly rely (*wesentliche Vertragspflicht*).
    - 24.3.3. Lucid's liability under Section 24.3.2 is limited to the typical, foreseeable damage at the time of the conclusion of the contract.
    - 24.3.4. Lucid's liability for damages due to data loss under Section 24.3.2 is limited to the amount required to restore the data, which would have been incurred even with regular and appropriate data backup by you.
  6. 24.4. Liability of representatives. The limitation and/or restriction of liability in this Section 24 shall equally apply to the personal liability of our legal representatives, officers, employees, assistants in performance, and agents.

7. 24.5. Unaffected liability. Any liability of ours for given guarantees (*Garantien*) (which must be expressly designated as such), for claims under the Product Liability Act and in cases of fraudulent concealment of defects by us, remains unaffected.

24.6. Exclusion. Any further liability of ours is excluded.