

# Standard Terms and Conditions

## SERVICE DEFINITION DOCUMENT

Prepared for: Crown Commercial Services

In relation to: G-Cloud 14 Lot 3 Cloud Support Services

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## 1. TERMS AND CONDITIONS

This document outlines the general terms and conditions relevant to the service offerings by CODA Security through the G-Cloud 14 framework, as part of Lot 3 - Cloud Support.

Additional considerations may apply to specific work packages, and these are discussed as part of the initial scoping process.

### 1.1. Complaints Procedure

CODA has a formally documented complaints procedure, a copy of which is available upon request. In summary, the key points are presented below:

- All complaints raised will be handled professionally, courteously, and in confidence.
- The person or persons raising a complaint will be kept informed of developments and outcomes as appropriate to the nature of the complaint.
- CODA endeavour to respond to all initial communication pursuant to a complaint within ten working days and will seek to find an acceptable resolution within 3 calendar months, wherever possible.
- Should the person or person(s) raising the complaint be unsatisfied with the outcome of their complaint or feel that their complaint has not been handled sensitively or professionally, they retain the right to refer the complaint to a suitable external body for arbitration or legal advice. CODA will endeavour to support and co-operate with such action to the extent that is deemed appropriate and compliant with applicable legislation.

### 1.2. Standard Terms and Conditions

The following terms and conditions apply to the services described in any proposal issued by CODA, except where they conflict with existing frameworks. In those instances, the terms and conditions of the agreed frameworks will take precedence.

#### 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

##### 1.1. Definitions:

- 1.1.1. **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.1.2. **Charges:** the charges payable by the Client for the supply of the Services in accordance with clause 6 and as set out in the Proposal.
- 1.1.3. **Client:** the person or firm who purchases Services from CODA.
- 1.1.4. **Client Default:** has the meaning set out in clause 4.2.
- 1.1.5. **Client Dependencies:** any requirements, dependencies or other obligations of the Client, as specified in the Proposal or otherwise agreed between the parties in writing.
- 1.1.6. **CODA:** CODA Security Limited registered in England and Wales with company number 10735021 and registered office at Highdown House, 11 Highdown Road, Leamington Spa, Warwickshire, England, CV31 1XT.

- 1.1.7. **Commencement Date:** has the meaning set out in clause 2.4.
- 1.1.8. **Conditions:** these terms and conditions as amended from time to time in accordance with clause 13.5.
- 1.1.9. **Contract:** the contract between CODA and the Client for the supply of Services in accordance with these Conditions and the Proposal.
- 1.1.10. **Contract Manager:** an individual from each party responsible for the day-to-day performance of the Contract, appointed in accordance with clause 5.1.
- 1.1.11. **Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
- 1.1.12. **Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.
- 1.1.13. **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
- 1.1.14. **Dispute:** has the meaning set out in clause 13.10.1.
- 1.1.15. **Insolvency Event:** any event where a party:
- a) suspends or threatens to suspend payment of its debts, is unable to pay or admits inability to pay its debts or is deemed unable to pay its debts;
  - b) makes a proposal for or enters into any compromise or arrangement with any of its creditors (other than for a solvent reconstruction);
  - c) applies for or obtains a moratorium under Part A1 of the Insolvency Act 1986;
  - d) a petition is filed, a notice is given, a resolution is passed, or an order is made for the winding up of that party (other than for a solvent reconstruction);
  - e) a notice of intention, application or order is made for the appointment of an administrator of that party;
  - f) a person becomes entitled to appoint a receiver or administrative receiver over any assets of that party;
  - g) a creditor attaches or takes possession of, or any process is enforced against any that party's assets;
  - h) any event occurs that has an effect equivalent or similar to any of the above in any jurisdiction.
- 1.1.16. **Intellectual Property Rights:** patents, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade

secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

- 1.1.17. **Proposal:** the document agreed between the parties in accordance with clause 2 that sets out the key commercial terms for the supply of Services from CODA to the Client. For the avoidance of doubt, the Proposal forms part of the Contract.
- 1.1.18. **Report:** the report produced by CODA for the Client summarising its findings following performance of the Services together with any other ancillary documents such as issue lists and spreadsheets.
- 1.1.19. **Request for Proposal (RFP):** the Client's request for a Proposal for Services, submitted as part of a public procurement exercise or to CODA verbally or in writing from time to time.
- 1.1.20. **Services:** the services, including the Report, supplied by CODA to the Client as set out in the Proposal.
- 1.1.21. **Systems:** the systems and networks, processes and policies which the Client requires to be security tested as part of the Services, as specified in the Proposal.
- 1.2. Interpretation:
  - 1.2.1. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
  - 1.2.2. Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
  - 1.2.3. A reference to **writing** or **written** includes email.

## 2. BASIS OF CONTRACT

- 2.1. From time to time, the Client shall issue a RFP to CODA for CODA to provide certain Services and provide CODA with as much information as CODA reasonably requests in order to prepare a draft Proposal for the Services requested (including as a minimum, the nature of the Services and the Client's preferred duration and time frame for commencing the Services). The RFP constitutes an offer by the Client to purchase Services in accordance with these Conditions.
- 2.2. Following receipt of an RFP and the information requested from the Client, CODA shall, as soon as reasonably practicable either:
  - 2.2.1. inform the Client that it declines to provide the requested Services; or
  - 2.2.2. provide the Client with a draft Proposal.
- 2.3. Where CODA provides the Client with a draft Proposal pursuant to clause 2.2.2, the Client shall place an order for the Services by:
  - 2.3.1. returning a signed copy of the Proposal to CODA; or

- 2.3.2. confirming its acceptance of the Proposal to CODA in writing, and such confirmation shall be deemed to be subject to the terms of the agreed Proposal and these Conditions.
- 2.4. The Client's order for the Services shall only be deemed to be accepted when CODA issues written acceptance of the order to the Client or commences performance of the Services, whichever happens sooner, at which point and on which date the Contract shall come into existence ("Commencement Date").
- 2.5. Following the Commencement Date, the parties may agree specific scopes of work from time to time for how the Services specified in the Proposal are to be performed for the Client (each a "Scope of Work"). Each Scope of Work shall, upon signature by both parties:
  - 2.5.1. be legally binding between the parties, form part of the Contract and be subject to the terms of the Proposal and these Conditions;
  - 2.5.2. (to the extent applicable) be deemed to vary the Contract and/or the Services, and, in the event of a conflict between the terms of any Scope of Work and the Proposal and/or these Conditions, the terms of the Scope of Work shall prevail.
- 2.6. Any samples, drawings, descriptive matter or advertising issued by CODA, and any descriptions or illustrations contained in CODA's website or other publications, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.7. These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.8. Any quotation given by CODA shall not constitute an offer and is only valid for a period of 60 days from its date of issue.

### **3. SUPPLY OF SERVICES**

- 3.1. CODA shall provide the Services to the Client in accordance with the Proposal in all material respects.
- 3.2. CODA shall provide the Services remotely and/or at the premises specified and made available by the Client unless otherwise specified in the Proposal.
- 3.3. CODA shall use all reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.4. CODA reserves the right to amend the Proposal if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially



affect the nature or quality of the Services, and CODA shall notify the Client in any such event.

- 3.5. CODA warrants to the Client that the Services will be provided using reasonable care and skill and that the individuals it engages to perform the Services will be suitably qualified and accredited.
- 3.6. CODA shall:
  - 3.6.1. deliver the Report to the Client within a reasonable period of time following completion of the performance of the Services and inform the Client as soon as possible (and in any event within 2 working days of completion of performance of the Services, subject to client availability) of any "high risk" issues (as determined in accordance with CODA's risk assessment methodology) it identifies as a result of performing the Services;
  - 3.6.2. use reasonable endeavours to observe all health and safety, security and other requirements that apply at any of the Client's premises and that have been communicated to it in writing by the Client;
  - 3.6.3. use reasonable endeavours not to break or cause damage to any devices on which it performs the Services;
  - 3.6.4. subject to clause 3.7.1 and unless otherwise agreed in writing between the parties as part of the Services, not seek to exploit or intentionally damage any vulnerability and/or security risk it identifies as part of the Services to the detriment of the Client; and
  - 3.6.5. perform the Services in accordance with all laws and regulations in England and Wales which are applicable to CODA's performance of the Services, including (but not limited to) and where applicable:
    - a) the Freedom of Information Act 2000;
    - b) the Payment Card Industry Data Security Standard;
    - c) the Official Secrets Act 1989;
    - d) subject to clause 3.7.2, the Computer Misuse Act 1990; and
    - e) article 8 of Schedule 1 of the Human Rights Act 1998.
- 3.7. The parties acknowledge and agree that:
  - 3.7.1. the Client accepts that the Services, by their nature, may cause loss, damage and/or disruption to the Client's Systems and/or possible loss of and/or corruption to the Client's data;
  - 3.7.2. the Client has consented to the performance of the Services and therefore the performance of the Services shall not constitute an offence under the Computer Misuse Act 1990;
  - 3.7.3. where CODA considers it necessary to have specific physical or digital assets and/or devices of the Client ("Assets") transferred to it, in order for CODA to perform the Services on such Assets, such Assets will be transferred between the parties either in person or via secure courier or encrypted media;
  - 3.7.4. any Report issued as part of the Services represents a security assessment of the Systems and the Client at the specific point or period in time set out in the Report (and in the event none is specified in the Report, the date on which the Report is submitted

to the Client) and cannot be taken as a statement of the past or future security of the same;

- 3.7.5. CODA makes no guarantee that it will identify all security issues of the Client;
- 3.7.6. unless expressly stated otherwise in the Proposal, the Services shall not include testing for denial of service or brute force password guessing; and
- 3.7.7. where the Services are conducted in accordance with the requirements of the National Cyber Security Centre (NCSC) CHECK scheme, CODA shall for up to seven (7) years retain for itself, and shall make available to the NCSC for external validation of the Services, a copy of the Report, unless prevented from doing so due to the particular sensitivity or classification of the system(s) assessed or the Report(s) produced. In this event, the Client shall be responsible for the retention and distribution of any testing materials and Reports.

## **4. CLIENT'S OBLIGATIONS**

- 4.1. The Client shall:
  - 4.1.1. ensure that the terms of the RFP and any information it provides to CODA are complete and accurate;
  - 4.1.2. co-operate with CODA and provide CODA with all necessary assistance and information it requires in all matters relating to the Services;
  - 4.1.3. provide CODA, its employees, agents, consultants and subcontractors, with access to the Client's premises, hardware, software, office accommodation and other facilities as reasonably required by CODA;
  - 4.1.4. provide CODA with such network access, access to data centres, servers and switch rooms, information and materials as CODA may reasonably require in order to perform the Services, and ensure that such information is complete and accurate in all material respects;
  - 4.1.5. prepare the Client's premises for the performance of the Services;
  - 4.1.6. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start, including but not limited to the consent of any internet service provider or other third party hosting any aspect of the Client's systems and/or networks on which CODA is to perform the Services;
  - 4.1.7. comply with and procure all Client Dependencies as specified in the Proposal;
  - 4.1.8. prior to the commencement of the Services:
    - a) create back-ups of all of its Systems; and
    - b) ensure that the IP addresses from which CODA shall perform the Services are added to any intrusion detection, prevention or filtering system of the Client, in order for CODA to be able to perform the Services; and
    - c) otherwise comply with CODA's reasonable instructions and requests in relation to any conditions that need to be satisfied prior to commencement of the Services;
  - 4.1.9. during performance of the Services, notify CODA immediately in writing if at any stage it requires CODA to suspend provision of the Services in order to carry out business



critical functions, at which point CODA may deem the Contract to have been terminated by the Client in accordance with clause 11.1;

- 4.1.10. promptly upon request provide such information as CODA may reasonably require on the ongoing financial position of the Client; and
- 4.1.11. promptly upon request provide such information as CODA may reasonably require on the ongoing financial position of the Client.
- 4.2. If CODA's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("Client Default"):
  - 4.2.1. without limiting or affecting any other right or remedy available to it, CODA shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays CODA's performance of any of its obligations;
  - 4.2.2. CODA shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from CODA's failure or delay to perform any of its obligations as set out in this clause 4.2; and
  - 4.2.3. the Client shall reimburse CODA on written demand for any costs or losses sustained or incurred by CODA arising directly or indirectly from the Client Default.

## **5. CONTRACT GOVERNANCE**

- 5.1. CODA and the Client shall each have in place a Contract Manager in respect of the Services, who shall have authority under the Contract to contractually bind the respective parties on all matters relating to the Services.
- 5.2. The Client shall ensure that its Contract Manager has sufficient authority, and sufficient skill and experience (or access to other colleagues who have such skill and experience), to be capable of agreeing the appropriateness of any proposed Scope of Work and the Services to be performed by CODA.

## **6. CHARGES AND PAYMENT**

- 6.1. The Charges for the Services shall be calculated on a time and materials basis:
  - 6.1.1. the Charges shall be calculated in accordance with CODA's daily fee rates, as set out in the Proposal;
  - 6.1.2. CODA's daily fee rates for each individual are calculated on the basis of an eight-hour day between 8.00 am and 6.00 pm worked on Business Days;
  - 6.1.3. CODA shall be entitled, at its discretion, to charge an overtime rate of 150% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours of 9:00am and 5:00pm on a Business Day; and
  - 6.1.4. CODA shall be entitled to charge the Client for:
    - a) any expenses reasonably incurred by the individuals whom CODA engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses subject to:

- i. where an individual is required to travel outside the United Kingdom, CODA providing the Client with:
  - 1. a reasonable but non-binding estimate of expenses to be incurred; and
  - 2. documentary evidence of any expenses which are subsequently incurred;
- ii. a maximum of:
  - 1. £350 per individual per day inside the M25, in Scotland or in Northern Ireland and
  - 2. £300 per individual per day anywhere else in the United Kingdom;
- iii. £50 per individual per hour for travel time outside the hours referred to in clause 6.1.2; and
- iv. the cost of services provided by third parties and required by CODA for the performance of the Services, and for the cost of any materials.

6.2. CODA shall invoice the Client in accordance with the terms of the Proposal.

6.3. The Client shall pay each invoice submitted by CODA:

6.3.1. unless otherwise agreed in writing between the parties, within thirty (30) days of the date of the invoice; and

6.3.2. in full and in cleared funds to a bank account nominated in writing by CODA, and time for payment shall be of the essence of the Contract.

6.4. All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by CODA to the Client, the Client shall, on receipt of a valid VAT invoice from CODA, pay to CODA such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6.5. If the Client fails to make a payment due to CODA under the Contract by the due date, then, without limiting CODA's remedies under clause 11, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.5 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

6.6. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **7. INTELLECTUAL PROPERTY RIGHTS**

7.1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client)

including but not limited to in relation to the techniques and technologies used by CODA to perform the Services shall be owned by CODA.

- 7.2. CODA grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and use the Report in its normal course of business.
- 7.3. The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 7.2 for commercial gain.
- 7.4. The Client grants CODA a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to CODA for the term of the Contract for the purpose of providing the Services to the Client.

## **8. NON-SOLICITATION**

- 8.1. The Client shall not, without the prior written consent of CODA, at any time from the date on which any Services commence to the expiry of twelve (12) months after the completion of such Services, solicit or entice away from CODA or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of CODA in the provision of such Services.
- 8.2. Any consent given by CODA in accordance with clause 8.1 shall be subject to the Client paying to CODA a sum equivalent to 25% of the then current annual remuneration of CODA's employee, consultant or subcontractor or, if higher, 25% of the annual remuneration to be paid by the Client to that employee, consultant or subcontractor.

## **9. DATA PROTECTION**

- 9.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 9.2. The parties acknowledge that, between the parties and for the purposes of the Data Protection Legislation, the Client is the controller and CODA is the processor. Schedule 1 (Processing, Personal Data and Data Subjects) sets out the scope, nature and purpose of processing by CODA, the duration of the processing and the types of personal data and categories of data subject.
- 9.3. Without prejudice to the generality of clause 9.1, the Client will ensure that it has all necessary appropriate consents and notices in place:
  - 9.3.1. to enable lawful transfer of the personal data to CODA for the duration and purposes of the Contract; and
  - 9.3.2. for CODA to perform its obligations under the Contract.
- 9.4. Without prejudice to the generality of clause 9.1, CODA shall, in relation to any personal data processed in connection with the performance by CODA of its obligations under the Contract:
  - 9.4.1. process that personal data only on the documented written instructions of the Client which are set out in Schedule 1 (Processing, Personal Data and Data Subjects) unless CODA is required by applicable laws, statutes, regulations and codes ("Applicable Laws") from time to time in force. to otherwise process that personal data. Where CODA is relying on the laws of a member of the European Union or European Union Law as the basis for processing personal data, CODA shall promptly notify the Client of

this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit CODA from so notifying the Client;

- 9.4.2. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);
- 9.4.3. ensure that all personnel who have access to and/or process personal data:
  - a) have a need to have access to and/or process such personal data in order for CODA to perform the Services;
  - b) are adequately trained in relation to data protection;
  - c) are informed of the confidential nature of the personal data and that they must not disclose personal data
  - d) are obliged to keep the personal data confidential;
- 9.4.4. not transfer any personal data outside of the European Economic Area unless the prior written consent of the Client has been obtained (such consent not to be unreasonably withheld or delayed);
- 9.4.5. assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 9.4.6. notify the Client without undue delay on becoming aware of a personal data breach;
- 9.4.7. at the written direction of the Client, delete or return personal data and copies to the Client on termination or expiry of the Contract unless required by Applicable Law to store the personal data; and
- 9.4.8. maintain complete and accurate records and information to demonstrate its compliance with this clause 9 and immediately inform the Client if, in CODA's opinion, an instruction infringes the Data Protection Legislation.
- 9.5. With the exception of the following categories of third parties, to whom the Client will have been deemed to have consented to CODA appointing as a third party processor of personal data under this Contract, CODA shall not appoint any third party processor of personal data under this Contract without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed):
  - 9.5.1. the NCSC;
  - 9.5.2. CODA's service providers acting as processors who provide IT and system administration services;

- 9.5.3. CODA's professional advisers acting as processors or joint controllers including lawyers, bankers, accountants, auditors and insurers who provide consultancy, banking, legal, insurance and accounting services; and
- 9.5.4. HM Revenue & Customs, regulators and other authorities acting as processors or joint controllers who require reporting of processing activities in certain circumstances.
- 9.6. CODA confirms that it will have in place with each third party processor a written agreement incorporating terms which are substantially similar to those set out in this clause 9 and which will reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Client and CODA, CODA shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 9.5.
- 9.7. Either party may, at any time on not less than thirty (30) days' notice, revise this clause 9 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 replaced by attachment to the Proposal).

## **10. LIMITATION OF LIABILITY**

- 10.1. Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
  - 10.1.1. death or personal injury caused by negligence;
  - 10.1.2. fraud or fraudulent misrepresentation; and
  - 10.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 10.2. For the avoidance of doubt, CODA shall not be liable to any of the Client's customers, suppliers, internet service providers or any other third parties in respect of any losses, damages, costs, expenses or other claims incurred by such third parties as a result of the performance of CODA's obligations under the Contract.
- 10.3. Subject to clause 10.1, CODA's total aggregate liability to the Client arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise for any loss or damage shall not exceed £5,000,000.
- 10.4. Subject to clause 10.1, neither party shall be liable to the other for any of the following types of loss:
  - 10.4.1. loss of profits;
  - 10.4.2. loss of sales or business;
  - 10.4.3. loss of agreements or contracts;
  - 10.4.4. loss of anticipated savings;
  - 10.4.5. loss of use or corruption of software, data or information;
  - 10.4.6. loss of or damage to goodwill; and
  - 10.4.7. indirect or consequential loss.
- 10.5. CODA has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections

3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

10.6. This clause 10 shall survive termination of the Contract.

## **11. TERMINATION**

11.1. Subject to clause 12.1, without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party written notice.

11.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

11.2.1. the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of that party being notified in writing to do so;

11.2.2. an Insolvency Event occurs in respect of the other party;

11.2.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

11.2.4. the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion:

a) the other party is or will become subject to an Insolvency Event; and/or

b) the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

11.3. Without affecting any other right or remedy available to it, CODA may terminate the Contract with immediate effect by giving written notice to the Client if:

11.3.1. the Client fails to pay any amount due under the Contract or any other contract between the parties on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment; or

11.3.2. there is a change of control of the Client.

11.4. Without affecting any other right or remedy available to it, CODA may suspend the supply of Services under the Contract or any other contract between the Client and CODA if:

11.4.1. the Client fails to pay any amount due under the Contract or any other contract between the parties on the due date for payment;

11.4.2. the Client becomes subject to any of the events listed in clause 11.2.3 or clause 11.2.4, or CODA reasonably believes that the Client is about to become subject to any of them; and

11.4.3. CODA reasonably believes that the Client is about to become subject to any of the events listed in clause 11.2.2.

## **12. CONSEQUENCES OF TERMINATION**

12.1. On termination of the Contract by the Client in accordance with clause 11.1, the Client shall pay to CODA the following within seven (7) days of receipt of such notice to terminate:

12.1.1. in respect of all aspects of the Services that would have been performed on-site, a cancellation fee calculated in accordance with the following:



Date on which CODA receives the notice to terminate	Cancellation Fee
More than 10 Business Days prior to the commencement of the Services	0% of the Charges
Between 10 and 5 Business Days (inclusive) prior to the commencement of the Services	25% of the Charges
Less than 5 Business Days but equal to or more than 2 Business Days prior to the commencement of the Services	50% of the Charges
Less than 2 Business Days but equal to or more than 1 Business Day prior to the commencement of the Services	75% of the Charges
Less than 1 Business Day prior to the commencement of the Services	100% of the Charges

- 12.1.2. in respect of all aspects of the Services that would have been performed remotely, a cancellation fee calculated in accordance with the table below:

Date on which CODA receives the notice to terminate	Cancellation Fee
More than 5 Business Days prior to the commencement of the Services	0% of the Charges
Between 5 and 2 Business Days (inclusive) prior to the commencement of the Services	25% of the Charges
Less than 2 Business Days but equal to or more than 1 Business Day prior to the commencement of the Services	50% of the Charges
Less than 1 Business Day prior to the commencement of the Services	75% of the Charges
During the testing window / performance of the Services	100% of the Charges

- 12.1.3. any other costs and expenses that CODA has reasonably incurred in anticipation of performing the Services which CODA cannot cancel or rearrange, together with any administrative cancellation charges payable by CODA in respect of such costs and expenses.

- 12.2. On termination or expiry of the Contract for any reason:

- 12.2.1. the Client shall immediately pay to CODA all of CODA's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, CODA shall submit an invoice, which shall be payable by the Client immediately on receipt;
- 12.2.2. the Client shall return all of CODA Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then CODA may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 12.3. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry,

including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

- 12.4. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **13. GENERAL**

- 13.1. Force majeure. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control ("Force Majeure Event") provided that "Force Majeure Event" shall not be deemed to include (a) any labour or trade dispute, strikes, industrial action or lockouts or (b) interruptions or failure of networks and/or other utilities. If a Force Majeure Event prevents, hinders or delays a party's performance of its obligations under the Contract for a continuous period of more than four (4) weeks, the party not affected by the Force Majeure Event may terminate the Contract by giving written notice to the other party.
- 13.2. Assignment and other dealings.
- 13.2.1. CODA may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 13.2.2. The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of CODA.
- 13.3. Confidentiality.
- 13.3.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.3.2.
- 13.3.2. Each party may disclose the other party's confidential information:
- a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.3; and
  - b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3.3. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 13.4. Entire agreement.
- 13.4.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.



- 13.4.2. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 13.5. Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 13.6. Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.7. Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 13.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 13.8. Notices.
- 13.8.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Proposal (provided that any email is accompanied with a delivery receipt).
- 13.8.2. Any notice or communication shall be deemed to have been received:
- a) if delivered by hand, at the time the notice is left at the proper address;
  - b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - c) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 13.8.2c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 13.8.3. This clause 13.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 13.9. Third party rights. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 13.10. Dispute Resolution Procedure.
- 13.10.1. If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it ("Dispute") then the parties shall follow the procedure set out in this clause, provided that where the Dispute relates to Services which are conducted in

accordance with the requirements of the NCSC CHECK scheme, the NCSC CHECK dispute resolution procedure shall apply:

- a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars, including but not limited to:
  - i. a clear, detailed description of the Dispute;
  - ii. copies of any letters or emails related to the Dispute;
  - iii. time and date log of all events related to the Dispute, in particular the time and date that the circumstances giving rise to the Dispute were raised and the time and date of any further communication;
  - iv. contact details of the person(s) raising the Dispute;
  - v. the specific Services that the complaint relates to, if appropriate; and
  - vi. all relevant supporting documents,
  - vii. collectively the "Dispute Notice".
- b) the receiving party shall acknowledge receipt of the Dispute Notice in writing within ten (10) Business Days of such receipt and the Contract Managers of both parties shall attempt in good faith to resolve the Dispute and in accordance with CODA's Complaints Policy and Procedure;
- c) if the Contract Managers of both parties are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the CEO of the Client and CEO of CODA, who shall attempt in good faith to resolve it; and
- d) if the CEO of the Client and CEO of CODA are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing ("ADR notice") to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than fourteen (14) days after the date of the ADR notice.

13.10.2. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 13.12 which clause shall apply at all times.

13.10.3. If the Dispute is not resolved within thirty (30) days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of thirty (30) days, or the mediation terminates before the expiration of the said period of thirty (30) days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 13.12.

13.11. Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

13.12. Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual

disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

## **Schedule 1 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

### **Part 1 - Processing by CODA**

#### **1. SCOPE, NATURE & PURPOSE OF PROCESSING**

CODA may process the personal data set out below in this Schedule 1 as part of inspecting, reviewing, assessing, penetration testing and otherwise testing the Client's Systems, infrastructure and physical and digital environments from a security perspective and otherwise performing the Services and its obligations under the Contract.

#### **2. DURATION OF THE PROCESSING**

Unless required to retain the information for a longer period under any legal obligation or as otherwise stated in the Contract, the personal data will be retained for as long as necessary to provide the Services or for the term of the Contract (whichever is shortest).

### **Part 2 - Types of Personal Data**

Name, job title, employer/business, address, email address, IP address, telephone number, mobile phone number, bank details, employee username and log-in details, employment information and any other types of personal data which the Client may store in its Systems, infrastructure and physical and digital environments.

### **Part 3 - Categories of Data Subject**

- Employees, workers and contractors of the Client
- Potential and existing customers and contacts of the Client
- Potential and existing suppliers and contacts of the Client
- (Where applicable) Service personnel and Crown or civil servants

