



Crown
Commercial
Service

Terms & Conditions

G-Cloud 14

Framework Reference RM1557.14

Microsoft
Partner



Pivotal BI
— Leverage Your Data —

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1 Interpretation and Definitions

In these General Terms of Business, clause 22 shall apply regarding the use of defined terms and phrases. To the extent that any defined word and/or phrase is used in these General Terms of Business and the definition of such word and/or phrase is not specified in clause 22 (Definitions) hereunder, then such word and/or phrase shall be construed in accordance with the defined terms of the Call-Off Contract (including those set out in Schedule 6 (Glossary and interpretations) of the Call-Off Contract). In these General Terms of Business references to Order Form mean the Order Form (including Schedules 1 and 2 of the Call-Off Contract).

2 Formation of Contract

- a) These Terms and Conditions of Business (the 'Terms') shall form part of the Contract between the Client ('The Client') and Pivotal BI Limited ('Pivotal BI') of Kemp House 152-160 City Road, London EC1V 2NX (Company No. 04116171) for the provision by Pivotal BI Limited of consulting and other related services during the Engagement (the "Contract"). The Engagement means the work being carried out by one or more employees or contract staff of Pivotal BI. The Contract shall be governed by and construed in accordance with clause 23 and the parties irrevocably agree and accept that the relevant courts are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Contract.
- b) Subject to the foregoing, in the event of any conflict between these Terms or any other document which forms part of the Contract, these Terms shall prevail except where they have been amended (by specific reference to the relevant clause and paragraph of these Terms) as provided for herein.

3 Information Provided and Confidentiality

- a) The Client has disclosed and will continue to disclose to Pivotal BI all information which is necessary for the successful completion of the Engagement or which, in the reasonable opinion of Pivotal BI, is relevant to the Contract. The Client represents that all information disclosed or to be disclosed to Pivotal BI is or will be true and accurate in all material respects and not misleading in any material respect. The Client shall promptly notify to Pivotal BI in writing forthwith upon becoming aware of the same, any matter, fact or circumstances which is inconsistent in any material respect with any of the information untrue, inaccurate or misleading in any material respect.
- b) The Client shall provide promptly without charge all assistance which is reasonably required by Pivotal BI from time to time to carry out the Engagement in accordance with the provisions of the Contract.
- c) Subject to the sub-clauses 1)d), 1)e) and 1)f):
 - i) confidential information concerning the Client's business will not be disclosed by Pivotal BI to any third party without the Client's prior written consent unless otherwise required by law, or by a court of competent jurisdiction, a governmental or a regulatory authority; and
 - ii) all information and advice, written or oral, of whatever nature, and all other works made available by Pivotal BI to the Client are for the sole use of the Client and shall not be disclosed or made available by the Client to any third party without the prior written consent of Pivotal BI.
- d) The provisions of Sub-clause 1)c) shall not apply to any information which is in or enters the public domain other than by breach of that Sub-clause, is in the possession of the receiving party without restriction before the date of receipt from the other party or is obtained from a third party who is lawfully authorised to disclose such information.
- e) Nothing herein shall be construed to prevent either party from disclosing any information to its professional advisers or insurers, or to a third party in the proper performance of its rights and obligations under the Contract provided that the disclosing party shall use all reasonable endeavours to ensure that the person to whom such information is disclosed is informed of its confidential nature.
- f) Nothing herein shall be construed so as to prevent Pivotal BI from using techniques, ideas and other know-how gained during the performance of the Engagement including the furtherance of work for other Clients to the extent that such use does not result in a disclosure of confidential information in breach of this Clause 3 or an infringement of any Intellectual Property Right of the Client.

4 The Services Provided

4.1 Provision of Services

- a) We shall perform the Services in accordance with any specific terms as set out in the Order Form.

4.2 Timescales

- a) Unless specifically agreed otherwise in the Order Form, we shall use reasonable endeavours to perform the Services in accordance with any milestone dates specified in the Order Form or agreed between us in writing from time to time. We shall be under no obligation with respect to milestones or timetables unless the same have been agreed with you in accordance with the foregoing.

4.3 Opportunity to Correct

- a) If there is a failure or deficiency in the supply of Services by us (which is capable of remedy) you shall always give us a reasonable opportunity to correct such failure or deficiency, in accordance with clause 18.5 of the Call-Off Contract.

4.4 Work Outside of Scope

- a) Any work we do outside the scope of the Services at your request or with your agreement shall (unless otherwise agreed) be performed, and fees paid, in accordance with this Call-Off Contract, applying the applicable Fee Rates as set out in the "Business Change" column of our SFIA rates table.

4.5 Acceptance

- a) Where an Order Form specifies Acceptance Criteria for any particular Deliverables, then clauses 4.6 to 4.9 (below) shall apply to such Deliverables. If no acceptance criteria are specified or otherwise agreed, then you shall be deemed to have accepted the relevant Deliverable.

4.6 Notification

- a) We shall notify you when a Deliverable that is expressly stated in the Order Form to be subject to acceptance is ready for acceptance review. You shall then review such Deliverable against the relevant Acceptance Criteria.

4.7 Acceptance Procedure

- a) If such Deliverable materially meets the relevant Acceptance Criteria, you shall notify us immediately in writing, and such Deliverable shall be accepted by you. If it materially fails to meet the relevant Acceptance Criteria then you shall notify us immediately in writing, with sufficient details and comments in respect of the failure so that if we update the Deliverable to address the comments it shall meet the relevant Acceptance Criteria in all material respects. We shall then use reasonable endeavours to remedy such material defects and re-issue the relevant Deliverable for review against the relevant Acceptance Criteria within 30 (thirty) days (or such longer period as is reasonable in view of the nature of the defect) from the date of your notice.

4.8 Deemed Acceptance

- a) You confirm that you will be deemed to have accepted the relevant Deliverable on the earlier of: (a) using the Deliverable (other than for carrying out the acceptance review) or modifying it; or (b) 14 (fourteen) days from the date that we tell you that the relevant Deliverable is ready for acceptance (if you do not inform us within this time of any material failure of the Deliverable to meet the relevant Acceptance Criteria).

4.9 Meaning of Acceptance

- a) Acceptance of the relevant Deliverable in accordance with the provisions of this clause 4 confirms that the Deliverable meets the requirements of this Call-Off Contract and that you may not then reject the Deliverable or make any claims in respect of any defects or problems which are subsequently discovered by you in respect of the Deliverable (although this is without prejudice to your rights and remedies under clause 6 (below) and clauses 11.5 to 11.8 of the Call-Off Contract).

4.10 Changes

- a) If (subject to clauses 8.13 and 8.14 (Legislative Change) of the Framework Agreement (which are incorporated into the Call-Off Contract pursuant to clause 2 of the Call-Off Contract)) a Party proposes a Variation pursuant to clause 32.1 of the Call-Off Contract or clause 8.93 of the Framework Agreement (which is incorporated into the Call-Off Contract pursuant to clause 2 of the Call-Off Contract) or paragraphs 14 and 15 of Schedule 4 of the Framework Agreement (which is incorporated into the Call-Off Contract pursuant to clause 2 of the Call-Off Contract) or paragraph 6 of Annex 2 (Joint Controller Agreement) of the Call-Off Contract (in the case of you) or pursuant to clause 32.2 (in the case of us) it shall provide the other Party with information about the impact of the Change on other aspects of this Call-Off Contract; the other Party shall consider the proposed Variation and, if it is accepted, the Parties shall agree in writing the appropriate amendments to this Call-Off Contract; no Variation shall be effective unless agreed in writing and signed by the Parties' authorised representatives; and we may charge (at our applicable Fee Rates as set out in the "Business Change" column of our SFIA rates table) for our time spent considering your Variation requests; if a Variation request is later withdrawn but results in a delay to the performance of the Services (and we told you of the possibility of delay caused by the request) we shall not be liable for that delay and shall be entitled to a reasonable extension of time for performing our duties and agreed timescales shall be changed accordingly.

4.11 Assistance

- a) If we are required to comply with any remedial action reasonably proposed by you under clause 13.8 of the Call-Off Contract or where assistance or remedial support is requested by you under the terms of Schedule 4 of the Framework Agreement as incorporated into the Call-Off Contract pursuant to clauses 2 and 33.1 of the Call-Off Contract, this will be provided at your cost (to be charged at our applicable Fee Rates as set out in our SFIA rates table) unless the corruption, loss, breach or degradation of the Client Data or Data Loss Event was caused by our action or omission.

4.12 Standard of Services Provided

- a) The services provided by Pivotal BI shall be performed in accordance with this Contract. To the extent that the standard of the services has not been specified in the Contract, Pivotal BI shall use good quality materials, techniques and standards and execute the Contract with the care, skill and diligence required in accordance with best practice.

5 Intellectual Property Rights (IPR) in Deliverables

- a) For the purposes of these Terms and Conditions of Business, Deliverables shall mean the work product and materials which are originated and prepared for the Client by Pivotal BI (either independently or in concert with the Client or third parties) and delivered to the Client during the course of Pivotal BI's performance and comprising Project IPR and/or Pivotal BI Background IPR and/or Client Materials (as defined in Clauses 1)c) and 1)d) respectively). "**Project IPR**" shall mean the work product and materials which are originally developed by Pivotal BI during the course of the Project and supplied as, or as part of, a Deliverable, but excluding, for the avoidance of doubt, any Pivotal BI Background IPR or Client Materials.
- b) Upon final payment, the Client shall, subject to Clause 1)c) below and any restrictions applicable to any third-party materials embodied in the Deliverables, exclusively own all right title and interest in and to the Project IPR without any right or duty of accounting to the other party. Pivotal BI hereby assigns and conveys to the Client all rights, titles and interests necessary to give full effect to the Client's exclusive ownership of the Project IPR. After acceptance of a Deliverable by the Client, and pending final payment, Pivotal BI grants to the Client an irrevocable (but revocable in the event of non-payment of fees without cause), non-transferable, exclusive unpaid right and license to use, copy, modify and prepare derivative works of the Project IPR for purposes of the Client's internal business only. To the extent any Deliverable contains the Client's or Pivotal BI's Confidential Information, it shall be subject to Clause 3 above.
- c) The Client acknowledges that in the course of its performance of the Project, Pivotal BI may use products, materials or methodologies proprietary to Pivotal BI or a third party ("**Pivotal BI Background IPR**") or produce proprietary materials or methodologies that are not part of the Deliverables. The Client agrees that it will not have nor obtain right in such Pivotal BI Background IPR except:
 - i) to the extent the Pivotal BI Background IPR is incorporated into a Deliverable, to use it in perpetuity on an irrevocable basis as part of the Deliverable for purposes of the Client's internal business only; or

- ii) pursuant to a separate written agreement on terms to be agreed and the Client agrees to maintain the confidentiality of such items.
- d) The Client retains all rights in any materials owned or created by the Client and which are provided to Pivotal BI for the purposes of the Project ("**Client Materials**"). Pivotal BI shall have the right to use such Client Materials for the purposes of the Project only and to the extent Pivotal BI needs to use Client Materials in order to deliver the Deliverables to the Client, Pivotal BI shall have a non-transferable, non-exclusive, royalty free, perpetual licence to use such Client Materials.

6 Use of Deliverables and Materials:

6.1 Supplier IPR Deliverables

- a) You have the right to use the Deliverables and Materials (other than Client IPR Deliverables) (subject to any restrictions on use in this Call-Off Contract and applicable third-party licences (including Open Source Software ("OSS") licences) for your internal business purposes and for any other purpose agreed in the Order Form. You shall tell us if you propose that Materials and Deliverables will be provided to, or used by, a third-party, so that we can agree terms regarding such provision or use and/or require the third-party to enter into a direct relationship with us before any such Materials or Deliverables are made available to them. You will not sub-licence the Materials or Deliverables to or make them available to third parties without our prior written consent.
- b) The Client acknowledges that in the course of its performance of the Project, Pivotal BI may use products, materials or methodologies proprietary to Pivotal BI or a third party ("**Pivotal BI Background IPR**") or produce proprietary materials or methodologies that are not part of the Deliverables. The Client agrees that it will not have nor obtain right in such Pivotal BI Background IPR except:
 - i. to the extent the Pivotal BI Background IPR is incorporated into a Deliverable, to use it in perpetuity on an irrevocable basis as part of the Deliverable for purposes of the Client's internal business only; or
 - ii. pursuant to a separate written agreement on terms to be agreed and the Client agrees to maintain the confidentiality of such items.
- c) Pivotal BI shall be free to use its general knowledge, skills and experience and any ideas, concepts, know-how and techniques that are acquired (other than from the Client) or used while carrying out the Project.

6.1.1 Client IPR Deliverables

- a) All Intellectual Property Rights in Client IPR Deliverables shall vest in you on payment. You grant to us a perpetual, worldwide, royalty-free, non-exclusive, irrevocable licence to use, modify, adapt, enhance, reverse compile, decode and translate the Intellectual Property Rights in the Client IPR Deliverables for the purpose of performing the Services and for any other purpose unless using it would result in unauthorised disclosure of your Confidential Information.

6.2 Use of Your Materials

- a) Subject to clause 8.81 of the Framework Agreement (which is incorporated into the Call-Off Contract pursuant to clause 2 of the Call-Off Contract) and clause 12.3 of the Call-Off Contract, we and our Personnel may use any documentation or materials (including systems, methodologies, tools, software, reports, correspondence and advice) supplied or made available by or on behalf of you to the extent necessary for the performance of our obligations under this Call-Off Contract.

6.3 OSS

- a) When Open Source Software ("OSS") (including OSS tools, libraries, frameworks and any other element that is directly or indirectly governed under an OSS license) is made available to you under the Services:
 - i. you agree to the terms and conditions of the licence of the OSS (which we shall provide to you on your written request);
 - ii. such OSS shall be understood to be acquired by you, and its availability and proper functioning shall be deemed your responsibility;
 - iii. the respective OSS licence agreement shall apply with respect to such OSS, and you shall be bound by all covenants and obligations arising from the OSS licence agreements;
 - iv. we shall have no liability arising from such OSS, including any liability relating to use, interoperability, warranty, intellectual property, quality, design or software functionality, access to its maintenance, updates or otherwise; and
 - v. in the case of conflict between the OSS licence terms and other terms of this Call-Off Contract, the OSS license terms shall prevail.

6.4 Acknowledgement of OSS Terms

- a) You acknowledge and agree that notwithstanding any term to the contrary in the Call-Off Contract, in accordance with clause 11.4 of the Call-Off Contract the licence terms referred to in clause 6.3 of these General Terms of Business are acceptable to you and you shall indemnify us against all losses, liabilities, damages, costs and expenses we may suffer or incur to a third party in the event of non-compliance by you with the requirements of Clauses 6.3 a)i, 6.3 a)ii)c)i and 6.3 c)iii and/or the terms of any applicable third party licence terms. We shall provide the applicable third-party licence terms to you on your written request.

6.5 Third-party items

- a) Where you are responsible for providing third-party items (including software or hardware), you shall obtain any necessary licences and consents for you and us and our Personnel to use such items for the purposes of this Call-Off Contract.

6.6 IPR notices

- a) Neither Party shall delete or obscure any proprietary information or notices relating to Intellectual Property Rights (if any) appearing on documentation or materials provided by the other Party (including the Materials and the Deliverables).

6.7 OSS Suitability

- a) You acknowledge that any references in the Service Definition and/or Service Description to any OSS is for illustrative purposes only and that whether or not use of any OSS in the provision of the Services is appropriate or suitable is dependent

on the specific Services to be provided under the Call-Off Contract and that this will need to be determined between our receipt of your order and the Start Date.

7 Sub-Contracting

- a) Pivotal BI shall, with the Client's prior written consent, be entitled to sub-contract any part of the Engagement to any individual consultant or adviser engaged by Pivotal BI ("the Sub-Contractor") provided that:
 - i) where the Client requires Pivotal BI to contract the services of a Sub-Contractor specified by the Client (the "Client Nominated Sub-Contractor"), the Client shall accept responsibility for the work to be performed by the Client Nominated Sub-Contractor, and Pivotal BI, notwithstanding that it will be required to programme and integrate the work to be performed by the Client Nominated Sub-Contractor for the purposes of the Engagement, shall not be responsible or liable to the Client or any other person for the work performed by, and all acts, omissions, defaults and neglects of, the Client Nominated Sub-Contractor; and
 - ii) in all other cases, Pivotal BI shall remain responsible and liable to the Client for the work to be performed by the Sub-Contractor.

8 Non-Poaching of Staff

- a) Unless with the prior written consent of the other party, neither party will approach or offer employment either part time, full time or on a contract basis or to hire or contract with any consultant, sales or marketing employee nor offer or provide services to a customer or prospect referred or introduced by one party to the other without written approval for a period of 9 months after the Engagement was completed. Breach of this clause will make the party in breach liable to a compensation fee equal to 100% of the relevant employee's annual salary operating at the time of leaving the party not in breach. The above compensation fee excludes VAT at the ruling rate.
- b) If either party approach each other because either an employee has expressed a wish to leave one organisation to join the other, then both parties will come to an agreement in terms of an acceptable level of compensation and notice period. The default compensation to the losing party will be 30% of the employee's gross salary at the point of notice being given unless both parties agree in writing to diverge from the default compensation rate. Unless both parties agree in writing to a compensation rate other than the default rate within 30 days of the employee leaving; the default rate will apply. The above compensation fee rate excludes VAT at the ruling rate.

9 Termination of Engagement During the Engagement

- a) Where the Client informs Pivotal BI of the Engagement being terminated or delayed due to circumstances beyond the control of Pivotal BI but within the control of the Client, the Client must give Pivotal BI at least 30 days of notice in writing. The Client will be liable for consulting fees within the subsequent 30 days period that would have been charged where the notice period given is less than 30 days.

10 Liability

- a) Pivotal BI accepts no responsibility for any reliance that may be had by any third parties on any information or advice, written or oral, of whatever nature, or any other works unless the Client has sought the permission of Pivotal BI, for the provision of particular advice or information, or a particular work, to specified third parties and Pivotal BI gives its written permission prior to provision of the relevant information, advice or work. Pivotal BI may withhold such permission or grant such permission subject to conditions (including as to non-reliance).
- b) Pivotal BI shall indemnify and keep indemnified Pivotal BI for the duration of the Contract against injury (including death) to any persons or loss of or damage to any property which may arise out of the act, default or negligence of Pivotal BI, a sub-contractor, their employees or agents in consequence of Pivotal BI's obligations under the Contract and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- c) The Client shall indemnify and keep indemnified Pivotal BI for the duration of the Contract against injury (including death) to any persons, or loss of or damage to any property which may arise out of the act, default or negligence of the Client or any contractor employed by the Client (other than the Client or a sub-contractor) and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- d) Without thereby limiting their responsibilities under sub-clauses 1)b) and 1)c), each party shall insure with a reputable insurance company against all loss of and damage to property and injury to persons (including death) arising out of or in consequence of its obligations under the Contract and against all actions, claims, demands, costs and expenses in respect thereof.
- e) Save as expressly stated elsewhere in the Contract, neither party shall be liable to the other for consequential loss or damage.
- f) Notwithstanding any other express or implied terms or conditions of the contract, other than those set out in Sub-clause 10b), and notwithstanding any collateral contract, warranty or representation, the total aggregate liability (including liability for interest) of Pivotal BI (including any liability for the acts and omissions of its employees) and of its directors and employees, whether in contract, tort (including negligence) or otherwise, to the Client arising from or in connection with the engagement described in the Contract shall be limited to an amount equal to the fees paid or due and payable to Pivotal BI (as determined at the date when the liability arises) in the case of a Contract where the fees are neither fixed nor subject to a limit, or to an amount equal to the maximum fees payable to Pivotal BI in the case of a contract where the fees are either fixed or subject to a limit (the relevant amount being the 'Limit'). The Limit will not apply to any acts, omissions or misrepresentations which are in any case criminal, dishonest or fraudulent on the part of Pivotal BI and its directors or employees.

11 Engagement

- a) Pivotal BI shall not, without the written consent of the Client, assign its rights or obligations under the Contract. The Client may assign its rights under the Contract to any subsidiary or holding company (or any subsidiary of any holding company) of the Client as such terms are defined in S.736 of the Companies Act 1985.

12 Insolvency and Bankruptcy

- a) If Pivotal BI shall become insolvent or bankrupt or have a receiving order or administration order made against it or compound with its creditors or being a corporation commence to be wound up not being a members' voluntary winding up for the purpose of reconstruction or amalgamation, or carry on its business under an administrator or administrative receiver for the benefit of

its creditors or any of them, the Client shall have the right either to terminate the Contract forthwith by notice in writing to Pivotal BI or to the administrative receiver or administrator or liquidator or to any person in whom the Contract may become vested or to give such administrative receiver, administrator, liquidator or other person the option of carrying out the Contract subject to his providing a guarantee for the due and faithful performance of the Contract up to an amount to be agreed. In the event of termination under this sub-clause, the Client shall have the right, by prior notice to Pivotal BI, to enter its premises for the purpose only of removal of any items of equipment or materials which are clearly marked as being the property of the Client.

13 Force Majeure

- a) Neither Pivotal BI nor the Client will be liable for any delay in performing or failure to perform their obligations if such failure or delay is as a result of causes outside the reasonable control of the responsible party.

14 Third Party Rights

- a) Nothing in these Terms and Conditions of Business is intended to confer any benefit on any third party (whether referred to herein by name, class, description or otherwise) or any right to enforce a term of these Terms and Conditions of Business or the attached arrangement letter pursuant to the Contract (Rights of Third Parties) Act 1999.

15 Entire Agreement

- a) These Terms and Conditions of Business (and any appendices or attachments thereto) constitute the entire agreement between the Client and Pivotal BI relating to the Engagement and supersede all previous communications, representations and arrangements, written or oral, except in respect of any fraudulent misrepresentation made by either party. No variation will be effective unless in writing and signed by authorised representatives of both parties.

16 Data Privacy

- a) Both parties will comply with all relevant data privacy and protection legislation. If Pivotal BI receives personal data in connection with these Terms and Conditions of Business in relation to the Client and the Client's employees, directors and other officers, Pivotal BI may use this data solely for purposes connected with these Terms and Conditions of Business and the provision of services to the Client.

17 Relationship Between the Parties

- a) In connection with these Terms and Conditions of Business, each party is an independent contractor and as such will not have any authority to bind or commit the other party. Nothing in these Terms and Conditions of Business will be deemed or construed to create a joint venture, partnership or agency relationship between the parties for any purpose.

18 Calculation and Payment of Fees and Out of Pocket Expenses

- a) Fees will be charged at the agreed rate. Fees will be charged separately for each type of work and will be billed at monthly intervals. A standard day constitutes 8 hours. Where time per consultant per day exceeds 8 hours in any single day, additional time will be charged on an hourly basis calculated as the consultant's day rate divided by 8. This additional time will not be charged to the client without obtaining formal written agreement between all parties. Time worked at weekends will be billed at 1.5 times normal day rates on Saturday's and 2.0 times normal day rate on Sundays. Out of Pocket Expenses will also be added at agreed rates and / or cost (as per section 3). VAT, where applicable, at the current rate will be added to the invoice. Invoices for the previous month's consultancy will be raised and sent to the client. Invoices are payable within 30 days of the invoice date following acceptance by the Client of the Services. If invoices are not settled in full by then, Pivotal BI shall be entitled (without prejudice to any other rights) to suspend or terminate the Contract and any other Contract with the Client. Any queries concerning an invoice must be raised within 14 days of the receipt of the invoice.
- b) Except in the case of any element identified as fixed price, statements by Pivotal BI as to the total work time or total charges which may be involved in fulfilling the Engagement are supplied as estimates only and, whilst all reasonable efforts have been made to ensure their accuracy, no liability will be accepted in respect thereof. Without prejudice to the foregoing, if during the course of carrying out the Engagement Pivotal BI reasonably considers that an estimate of total work time or total charges previously given will prove to be a material underestimate, Pivotal BI will give the Client reasonable notice specifying the circumstances concerned, stating the additional work involved and estimating the increase in total work time or total charges which will result. All estimates are based on rates current at the time of quotation.

19 Expenses and Provision of Office Services

- a) The Client shall reimburse Pivotal BI for all Out of Pocket Expenses incurred in connection with the Engagement.
- b) When work is carried out on the Client's premises, the Client will provide without charge suitable office accommodation and support services (including use of telephone, facsimile, photocopying and ad hoc secretarial services).

20 Severability

- a) If any term or provision of these Terms and Conditions of Business is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions or the whole of these Terms and Conditions of Business but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties set forth in these Terms and Conditions of Business.

21 Notices

- a) Any notice or other communication given pursuant to this agreement shall be in writing and shall be effective either when delivered personally to the party for whom it is intended, or five (5) days following deposit of the same into the Royal Mail

(registered or recorded delivery or first class postage prepaid) or the next day if sent by overnight delivery services (with confirmation of delivery). Either party may designate a different address by notice to the other given in accordance herewith.

22 Definitions

22.1 Definitions

In these General Terms of Business, the following terms have the following meanings:

"Acceptance Criteria" means the acceptance criteria for any particular Deliverables as specified in an Order Form;

"Client IPR Deliverable" means any Deliverable or Material which is created by us in the course of performing the Services or exclusively for the purpose of performing the Services and which is described as a Client IPR Deliverable in the Order Form but it does not include: (i) any IPRs created independently of this Call-Off Contract; and/or (ii) any of the following IPRs which were owned by the Supplier or its third-party licensors on or before the Start Date (as enhanced or modified pursuant to this Call-Off Contract or otherwise):

(a) any Supplier Background IPRs;

(b) any IPRs owned or licensed by Supplier's third-party licensors; and

(c) any IPRs in Supplier software owned by the Supplier;

"Fee Rates" means the fee rates set out in our SFIA Rate Card;

"General Terms of Business" means the terms and conditions contained in this document;

"Materials" means all materials used, developed, or provided by us (including systems, Supplier Background IPRs, software, reports, correspondence and advice) but does not include Deliverables, and those materials provided by or on behalf of you;

"Personnel" means a Party's directors, officers, employees, workers, agents, third-party service providers (including Subcontractors), successors, and assignees;

"we", "us", "ours", "Pivotal BI" means Pivotal BI Limited; and

"you", "yours" means CCS or the Client whose details are set out in an Order Form.

23 Law

23.2 Governing law

This Call-Off Contract and any dispute or claim arising in connection with it shall be governed by the laws of England and Wales (or Scotland or Northern Ireland if the Client so requests in an Order Form).

23.3 Jurisdiction

Subject to clause 8.12 and clauses 8.66 to 8.79 (inclusive) of the Framework Agreement (which are incorporated into the Call-Off Contract pursuant to clause 2 of the Call-Off Contract), these General Terms of Business shall be subject to the exclusive jurisdiction of the courts of England and Wales (or Scotland or Northern Ireland, if the Client so requests in an Order Form).